Baldwin - Ohio

OHIO STATE BAR ASSOCIATION

REPORTS, VOL. V.

PROCEEDINGS OF THE ANNUAL MEETING

— OF THE —

ASSOCIATION,

HELD AT THE

CITY OF COLUMBUS,

— ON THE —

30th and 31st of DECEMBER, 1884.

CONSTITUTION, BY-LAWS, LIST OF OFFICERS, MEMBERS, ETC.

COLUMBUS, OHIO:
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1885.

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STATE BAR ASSOCIATION.

CONSTITUTION.

I. NAME.

This Association shall be known as "The Ohio State Bar Association."

2. OBJECT.

The Association is formed to advance the science of jurisprudence, to promote reform in the law, to facilitate the administration of justice, to uphold integrity, honor and courtesy in the legal profession, to encourage thorough liberal legal education, and to cultivate cordial intercourse among the members of the bar.

3. MEMBERSHIP.

The members of the Bar attending this Convention as delegates, this eight day of July, 1880, are hereby declared to be members of this Association, provided they shall, during its present session, pay the admission fee and sign this Constitution. Any member of the Bar, of good standing, residing or practicing in the State of Ohio, may become a member of the Association upon nomination and vote, as hereinafter provided.

4. ELECTION OF MEMBERS.

All nominations for membership shall be made by the Committee on Admission, and must be transmitted in writing to the President, and by him reported to the Association, and if any member demands a vote upon any name

thus reported, the Association shall thereupon vote thereon by ballot. Several nominees may be voted upon on the same ballot, and in such case placing the word "no" against any name or names upon the ticket, shall be deemed a negative vote against such name or names, and against those only. One negative vote in every five shall suffice to defeat an election. No member of the Bar, residing in a county where there is a local Bar Association, shall become a member of this Association unless he shall also be a member of such local Association.

5. OFFICERS.

The officers of the Association shall be a President, who shall deliver the annual address, and be ineligible for a second term; one Vice-President from each judicial district reported by membership in the Association; a Secretary and Treasurer. All of these shall be elected at the annual meeting, and hold their offices until the next annual meeting of the Association, and until their successors are elected.

6. COMMITTEES.

The President shall, with the approval of the Association, appoint the following standing committees: An Executive Committee; a Committee on Admissions; a Committee on Judicial Administration and Legal Reform; a Committee on Legal Education; a Committee on Grievances, and a Committee on Legal Biography; and each standing committee shall be composed of one member from every judicial district represented in the Association. A majority of the members of every committee who may be present at a meeting of the Association, shall constitute a quorum of such committee for the purposes of such meeting.

Every committee shall, at each annual meeting, report in writing a summary of its proceedings since the last annual report, together with any suggestions deemed

suitable and appertaining to its powers, duties or business. A general summary of all such annual reports and of the proceedings of the annual meetings shall be prepared and printed by and under the direction of the Executive Committee, together with the Constitution, By-Laws, names and residences of officers, standing committees and members of the Association, as soon as practicable after each annual meeting.

7. FINAL ACTION.

No action of the Association of a permanent nature, or recommending changes in law or the administration of justice, shall be final until approved by the Standing Committee, to which the same shall be referred by the Association.

8. PRESIDENT.

The President, or in his absence, the Senior Vice-President shall preside at all meetings of the Association, and the President shall deliver an address at the opening of the meeting next after his election.

9. EXECUTIVE COMMITTEE.

The President and Secretary shall be *ex-officio* members of the Executive Committee. This Committee shall manage the affiairs of the Association, subject to the provisions of the Constitution and By-Laws, and shall be vested with the title to all its property as trustees thereof, and shall make By-Laws for the Association, subject to amendment by the Association.

10. COMMITTEE ON ADMISSIONS.

The proceedings of this Committee shall be deemed confidential, and shall be kept secret, except so far as written or printed reports of the Committee shall be necessarily and officially made to the Association.

11. COMMITTEE ON JUDICIAL ADMINISTRATION AND LEGAL REFORM.

It shall be the duty of the Committee on Judicial Administration and Legal Reform to take record of all proposed changes of the law, and to recommend such as may be, in their opinion, entitled to the favorable influence of the Association; and further, to observe the working of the judicial system of the State, to collect information with reference thereto, and to recommend such action as they may deem advisable.

12. COMMITTEE ON LEGAL EDUCATION.

It shall be the duty of the Committee on Legal Education to examine and report what change it is expected to propose in the system of Legal Education and of admission to the practice of the profession in the State of Ohio.

13. COMMITTEE ON GRIEVANCES.

The Committee on Grievances shall receive all complaints which may be made in matters affecting the interests of the legal profession, the practice of the law and the administration of justice, and report the same to the Association with such recommendation as they may deem advisable.

The proceedings of this Committee shall be deemed confidential and kept secret, except so far as reports of the same shall be necessarily and officially made to the Association.

14. COMMITTEE ON LEGAL BIOGRAPHY.

The Committee on Legal Biography shall provide for the preservation among the archives of the Association of suitable written or printed momorials of the lives and characters of deceased members of the Ohio Bar.

SECRETARY.

The Secretary shall keep a record of the proceedings, and conduct the correspondence of the Association, and perform the usual duties of such office.

TREASURER.

The Treasurer shall collect and by order of the Executive Committee disburse all funds of the Association, and keep regular accounts, which at all times shall be open to the inspection of any member or members of the Executive Committee.

ANNUAL MEETING.

This Association shall meet annually at such time and place as the Executive Committee may select, and those present at such meeting shall constitute a quorum.

DUES.

The admission fee will, in all cases, be $2.00. The annual dues of members shall be $2.00, to be paid yearly on or before the first day of the Annual Meeting of the Association, and no person shall be qualified to exercise any privilege of membership who is in default.

AMENDMENTS.

This Constitution may be altered or amended by a vote of a majority of the members present, at any Annual Meeting, with the approval of the Executive Committee.

BY-LAWS.

The following By-Laws, prepared by the sub-Committee appointed for that purpose, were adopted in the month of September, 1881, by the following endorsement written thereon:

APPROVED.

The undersigned members of the Executive Committee hereby consent that a meeting of the Committee to consider the within By-Laws be dispensed with, and that said By-Laws be considered as adopted, and be published by the Secretary with his report.

RUFUS KING,
JOHN W. HERRON,
J. T. HOLMES,
L. J. CRITCHFIELD,
GEO. W. HOUK,
JOHN F. BROTHERTON,
WARREN P. NOBLE,
GEO. W. GEDDES,
CHAS. H. GROSVENOR,
D. A. HOLLINGSWORTH,
WM. H. UPSON.

BY-LAWS.

I. The Executive Committee, at its first meeting after each Annual Meeting of the Association, shall select some

person to make an address at the next Annual Meeting, on the life and services of any deceased member of the Bench or Bar of Ohio, of eminence, or other subject; and also not exceeding five members of the Association to read papers.

II. The Order of Exercises at the Annual Meeting shall be as follows:

(a) Annual Address of the President.

(b) Report of Committee on Admissions, and Election of Members.

(c) Report of the Secretary.

(d) Report of the Treasurer.

(e) Report of Standing Committees:

Executive Committee.
On Judicial Administration and Legal Reform.
On Legal Education.
On Grievances.
On Legal Biography.

(f) Reports of Special Committees.

(g) The Nomination of Officers.

(h) The Appointment of Standing Committees.

(i) Miscellaneous Business.

(j) The Election of Officers.

The address to be delivered by a person invited by the Executive Committee, shall be at the morning session of the second day of the Annual Meeting; and the reading of papers by the members appointed by the Executive Committee be on the same day, unless the Executive Committee shall designate some other time for the address and reading of papers. After the reading of each paper, an opportunity shall be given for discussion on the topic of the paper.

The Executive Committee shall publish, some days in advance of each Annual Meeting, a statement of the person who is to deliver the address, and the persons who are to read papers, and the subject of each.

III. No person taking a part in a discussion, shall speak more than ten minutes at a time, or more than twice on one subject.

A stenographer shall be employed at each Annual Meeting.

IV. At any of the meeting of the Association, members of the Bar of any foreign country or of any state other than Ohio, who are not members of the Association, may be admitted to the privileges of the floor during such meeting.

V. All papers read before the Association shall be lodged with the Secretary. The annual address of the President, the reports of the Committees, and all proceedings at the Annual Meeting, shall be printed; but no other address made or paper read or presented shall be printed, except by the order of the Executive Committee. Extra copies of reports, addresses and papers read before the Association may be printed for the use of their authors, not exceeding one hundred copies to each of such authors.

The Executive Committee, as a Committee on Publications, shall meet within one month after each Annual Meeting, at such time and place as the Chairman shall appoint.

VI. The terms of office of all officers elected at any annual meeting shall commence at the adjournment of such meeting; but the terms of office of the members of the several Committees appointed by the President shall commence immediately on their appointment.

VII. Each Committee shall elect its own officers, whose terms of office shall commence on their election and continue until the appointment of a new Committee. And each Standing Committee shall continue until its successor shall be appointed.

VIII. All Standing Committees shall meet on the day preceding each Annual Meeting, at the place where the

same is to be held, at such hour as the respective Chairmen may designate.

IX. Special meetings of any Committee shall be held at such times and places as the Chairmen thereof may appoint. Reasonable notice shall be given by him to each member by mail.

X. The Treasurer's report shall be examined and audited annually, before its presentation to the Association, by two members to be appointed by the Chairman of the Executive Committee.

ANNUAL SESSION

OF THE

OHIO STATE BAR ASSOCIATION,

HELD IN THE

Senate Chamber, State House, Columbus.

COLUMBUS, *Dec.* 30th, 1884.

10 O'CLOCK A. M.

The State Bar Association met in Annual Session. Gen. Durbin Ward, President, called the Association to order by saying:

The hour has arrived, and indeed, is a little past, when, by the direction of the Executive Committee, this meeting is to be called to order; and by the rules of the Association the first thing in order upon assembling is for the President to deliver what the Constitution calls, his Annual Address. I now proceed to perform that branch of my duties.

THE PROVINCE OF PROCEDURE.

GENTLEMEN OF THE STATE BAR ASSOCIATION.

Jurisprudence is alike a Science, an Art and a Philosophy. When the law deals with the rules of action which it prescribes and enforces, it is a science. When it gives practical application to its rules in the judicial forum, it is an

art. But when jurisprudence tests these rules and their judicial application in the crucible of ultimate reason, it then becomes a philosophy. Mathematics and dynamics are sciences, but architecture and photography are arts, while the *rationale* of matter and force is a philosophy.

The philosophy of the law so ably treated of in modern times by Montesquien, Bentham, Austin, Maine and others, to say nothing of ancient authors, is too profound a subject for this essay. The science of the law, broad as the great subject is, would require an elaboration no genius could compress into a speech. So a detailed discussion of the practical application of judicial law to the complicated affairs of men would far exceed the limits of the occasion.

I have therefore selected as my general theme: "*The Province of Procedure,*" and shall attempt to group in brief language the principles of administration in courts of justice, and the changes which experience has introduced into judicial methods of proceeding. Procedure as an art, is, of course, based on the science of jurisprudence, and indeed, often, without professing to legislate, originates and formulates important rules of the science itself. Procedure therefore, ought to conform in spirit to the jurisprudence it administers.

I.

THE SOURCES OF JURISPRUDENCE.

It is a trite truism that the real foundation of all positive law is the law of nature. All positive laws that contradict this primal law of nature, rightly understood, are pernicious and invalid. But human faculties are so imperfect, and human judgment based on their exercise so liable to perversion, that the perception and interpretation of this law become vague and sometimes even contradictory. As to human conduct, reason and experience must

define the tenents of this law, and organize them into positive law. In systems of government, both political and juridicial, the law of nature is but the imperfect obligation of the moralist; not the mandate of the Supreme power. Still all positive law must be construed in the light of the primal law from which it originates, which, in its broadest sense, is *the necessary relations arising from the nature of things*. There are some who claim that among men, the natural law is that of war, and others claim that the natural law is that of peace; some, that self-interest is the mainspring of human action, and others that domestic and social impulses are equally potent. These different conceptions of the underlying principles of human nature, must more or less color the interpretation different theorists will give to natural law, and the positive law founded thereon. But whatever speculative publicists may claim to be the essential philosophy of human action, the impulses of mankind, as well as their reason, aggregate them into families, societies, states. Their appetites, passions, fears and necessites naturally bring them into relations with each other, and those relations generate positive law. Nor can property, owned aggregately or separately, be eliminated from any condition in which these relations place mankind. And property also, whatever may be its origin, begets law. From these generic sources, civil and political institutions spring. Each one of these sources gives origin to rights, and imposes obligations. The rights are to be protected and the obligations enforced. The invasion of a right, or the breach of an obligation, must be punished as a wrong. The State must, therefore, have functions broad enough to accomplish those ends. With the general powers of government, we need not now deal. The subject of this discourse leads only to jurisprudence and its administration.

II.

AMERICAN JURISPRUDENCE.

As juridical law deals with the rights and duties of men defined by positive rules as construed in the light of reason, it opens in all countries a wide field of study and of practical application. Not only every civil right and wrong, in individual, domestic and social life, whether of person or property, falls within its scope, but every criminal derelict-tion towards society and the State. The relations of men to each other are so complicated, and their rights and interests in property so diversified, that the municipal law relating to them cannot be otherwise than complex. Jurisprudence seeks to define and administer, not only in their broadest significance, but in their minutest detail, the principles of justice tempered with equity, so that the mandate of the law and the deductions of right reason shall go hand in hand. This is a difficult task enough under any system, ancient or modern. But in a state of society where commercial and manufacturing industries abound, and where the restless spirit of innovation, adventure, enterprise and invention characterize the people, new questions are constantly arising which tax the legal genius of the Bar and Bench to the utmost. These conditions prevail in America more, perhaps, than in any other country, not even excepting England. Besides this, our people are made up largely of foreign citizens and denizens, and also of those who were but lately in servile condition. The great body of our people are the descendants of different nationalities and of the most vigorous European races, who come to this country with diverse ideas of civil and political law, and sometimes without the disposition to coalesce readily in developing a jurisprudence not always accordant with what they had been accustomed to abroad. And as in England, the struggle between the common law and the civil law

has been going on in the United States, sometimes producing inharmonious action between different jurisdictions. And at the same time conflicts in the minds of judges and lawyers have arisen as to the merits of each system generally, and as to which ought to be applied in a given case.

But still more difficult was it found to adapt the common law of England to the changed condition of our society. Whether the old common law originated in forgotten enactments of the Saxon Wittena Gemote, or the early English Parliaments, or was the product of unreported decisions of ancient judges, it was clear that its rules rested their authority on the reported cases of English courts. Much of the old common law was worn out even in England, and much of it abolished or amended by British statutes, or modified by more recent decisions of their own courts. A new common law, therefore, was transplanted to America, not the rugged old system prevalent in the days of the Plantagenets. In some places in our country, this modified common law took root and flourished with some vigor, and in others it was not adopted as a system at all. Whether it ever existed in Ohio as a body of law defining rights and punishing wrongs, even in civil cases, has never been authoritatively settled, though much of it has undoubtedly become interwoven with our system. Many of the common law modes of procedure were adopted, but common law crimes never existed in Ohio. So much of the common law as suited the habits and ideas of our people, was pruned by statute, and grew into a system of local law in most of the States of the Union, but we cannot be said to have a common law in America. We have no *National* common law, and the Federal Courts administer only so much of the English system as existed in each State as the local law of the State. The Federal Courts originally adopted, and in many States still use common law pleading, but have adopted, generally, the English equity juris-

prudence and pleading, and pay much respect to the wisdom of the Roman civil laws.

Jurisprudence, like all things valuable, is a growth, and a distinctive American jurisprudence may be well said to be still in its infancy. The similitude of all the State systems is great, and by statute or decision they are constantly, though slowly, moving towards greater uniformity.

III.

JUDICIAL ADMINISTRATION.

The office of judicial procedure is to administer the science of right. It is the application of the rules of jurisprudence to the affairs of men, and ought to be guided by postive law, while its footsteps are enlightened by the lamp of reason. The statue of justice is blind, not more to typify that she sees not the parties before her, than to symbolize that the true meaning of the law is not found on its face, but lies under the surface in that deeper reasoning which constitutes its spirit. Judicature evokes this spirit and makes the cold face of the written law radiant with its inner *conscience*, so as to enforce jurisprudence, not in the letter of the law which killeth, but in its spirit which maketh alive. I have chosen the term "Procedure" instead of "Judicature," because it is my object to show in orderly sequence, not barely the basis of adjudication, which declaratively settles rights and punishes wrongs, but the logical steps which precede and follow decision.

Procedure has to construe and administer postive laws in their letter, when there is no ambiguity either in the language, or the states of fact invoking the action of the court. But postive laws applicable to a whole community must inevitably be general and not always elaborate enough to meet the special facts of a transaction, when sought to be adjudged under the general law. The general rule, is

all that can, in the nature of things, be promulgated by the law-making power, for no code, political, civil, criminal or ethical could undertake to lay down rules at the same time broad and minute enough to meet every conceivable complication of human relation to person and property. General jurisprudence, like the telescope, may discern distant objects and measure their relative positions as to each other, and their proper places in the Universe of the law of human rights and duties. Procedure supplements juridical codes, and like the microscope, looks into the arcana of law, natural and positive, and scrutinizes the very molecules of that judicial reason which must dictate final judgment. The telescope of jurisprudence as a general science, measures the distant sea-shore, or fixes the boundaries of the mountain forest, but the microscope of judicial procedure as a special art, is brought to the shore or the forest, and can reveal the color of the sands on the one, or the minutest fibres in the leaves on the other.

Human transactions are as multiform as the sands or the leaves and the exact adjustment of rights is as difficult as measuring the distance of the planets, or weighing the odor of the musk. Proximate justice is all then that can be practically reached, and procedure must recognize and be governed by both the written law of jurisprudence and the more occult law of natural reason. When, as in England, the law-making power is unfettered by constitutional limitation, its statute is supreme law, though the meaning may be ascertained by throwing upon it the lights of acknowledged jurisprudence and natural law. If it contravenes neither the one nor the other, its validity cannot be questioned. But if it is contrary to the whole body of the jurisprudence on which it is sought to be grafted, can a court declare it void as against public policy? Logically it would seem not in any country, for the law-giver can make and unmake courts and judges by legislating them out of official exist-

ence, and can define and limit their jurisdiction. In our country where the legislature is under constitutional restriction, the court may decide the statute itself unconstitutional and refuse to enforce it. That decision can only be made in a litigation before the court, and settles nothing authoritatively except the rights of the parties litigant *in that case*. It does not repeal the statute, and as to parties or subject matter not before the court has only the force of any other precedent. It is therefore, not my contention that a court can legislate or by decision establish any rule of personal or property rights overriding or limiting the legislative will of the state. The judge is but the creature of the state and his court is bound to construe and administer its postive rules of jurisprudence. What I claim is that when jurisprudence furnishes no rule of decision in a given state of facts, it is the right and bounden duty of the judge to find a rule of decision if he can by searching the unwritten page of natural law. He may follow or overrule precedents or make a precedent, as the right reason of the case may require, and that is legitimate judicial administration. It makes law for the particular case and is a necessity, for no appeal to the legislative power could mete out justice with like fairness and precision. It moulds the law to the growing wants of society, and to the specific circumstances that surround the parties and their litigation in cases not previously provided for, but in analogy to general jurisprudence and former rulings on points of law and states of fact similar, but not identical. It is the law of precedents, persuasive but not conclusive. It is a common law that ought to pervade all jurisdictions and all jurisprudence. The common law that courts may supply the deficiencies of postive law by applying the law of nature. This view of their functions ennobles courts and makes them the ministers of natual justice, the protectors of person and property, the conser-

vators of peace and order and the guardians of the hearthstone.

IV.

COURTS

1. *The Judge.—*

Let us now consider the practical administration of jurisprudence in judicial tribunals. The general constitution of the political state, whether prescriptive or written, determines its jurisprudence and establishes its judicature. The general constitution and jurisdiction of the court is what the sovereign power makes it, supplemented practically by that unwritten usage of making or following precedents to which I have already alluded. Their functions are extended or limited by the progress or decline of the jurisprudence under which they act, and they and their whole machinery are dominated by the will, in the last resort, of the political state. They are but an arm of the state and move with the whole body politic. They cannot be wisely considered apart therefore from the organic law of the state. Their former constitution and usages will illustrate the jurisprudence of earlier times and show how intimately related courts of procedure are to the civilization and ideas of the age in which they exist. The judicial function was not at first a separate department of government. The same power made and administered the law. In primitive times the patriarch, who ruled his family descendants as a state, might well make and execute the law. He was law-giver and judge. And in later times the chief, the baron, the king, ruled his subjects by the law of his own will, or the consent of the body politic that gave him power. Fixed rules of law or procedure were little more than a name. But natural justice was law, and the ruler devised his own means of ascertaining the facts, and exercised his own judgment in applying the law to them.

The judgment of Solomon in settling the rights of contending women to a child, is a striking example of the power of a primitive law-maker and judge. We know little of the jurisprudence of the ancient Asiatic or African nations. Before the Roman Republic and Empire, the judicial function seems to have been ill-defined and arbitrary, and even under the Republic, impartial and enlightened trials and judgments were scarcely possible. It was under the Empire that the idea of the modern judge with fixed rules of jurisprudence and impartial methods of procedure had birth. The actual differentiation, however, of government into legislative, executive and judicial departments is an evolution of the middle ages, and this led to a healthy advance in jurisprudence and procedure. The county court of the Saxon and early English times, decided the law much as had been done in all previous ages among the Teutonic tribes by the light of common sense, aided by a few unwritten usages. Under the Norman rule the king's courts were simply his vice gerents and removable at his pleasure. It was long before judges held by independent tenure, but this advance gave strength and stability to the law, for it left the judge to apply existing jurisdiction in obedience to the right and not in fear of a despotic sovereign. The early history of all jurisprudence strengthens the position, that while society was struggling to secure the guarantees of postive law in the defence of rights, and against the invasion of the sovereign or the assaults of the wrongdoer, it was ever felt that the judge ought to administer that postive law in the broad spirit of natural justice. This led in all systems to the recognition of equitable law and in England to the institution of the jury.

2. *The Jury.*—

This institution is as old as the common law, and having existed immemoriably among the tribes of Northern Europe, has been ascribed to the mythical Wodin. A

better attested origin is found in the trial by the whole body of freemen in the county, assembled at the ancient county court. This body acted on their own knowledge, and were both witnesses and jurors, to speak the truth of the facts to the court. This usage ripened into a jury of twelve free-holders, still to be of the *vicinage* that they might know the facts, the witnesses and the parties.

Magna Carta guarantees that no freeman shall be injured in person or property, "*nisi per legale judicium parium suorum vel per legem terrae.*" This was the equitable side of procedure, and secured the unlettered judgment of his peers to the litigant in all matters of fact. In criminal cases, it was deemed indispensable to liberty and safety, and still keeps its place in English and American jurisprudence, and is being introduced into modern Continental Europe. The old mode of selection by the Sheriff has given place to the wiser selection of our day. But it may be doubted whether the unanimity required to render a verdict ought to continue, and certainly the modern *professional juror* is the plague spot on the system.

3. *The Lawyer.*—

As another means of enlightening the judge, both as to the law and the facts, and of securing the consideration of natural justice in construing the rigid rules of positive law, the lawyer became, in the progress of procedure, an almost indispensable element of a court. True, as the advocate of his client, he is moved by the same interests and impulses to a large extent, and often struggles to defeat his antagonist by mere technical advantage, but he is constantly pressing, both to court and jury, the justice of his cause, and appealing to the *conscience* of the law; while his antagonist seeks to neutralize any technical advantage, and makes a like appeal to the great underlyiny law of all jurisprudence, the law of natural right. Our remote ancestors required every man to appear and prosecute or defend, in

person. And even in the time of Blackstone, neither criminals nor idiots were allowed counsel, for it was in law presumed that the court would not allow injustice to be done to either. As early as the statute of Westminster, parties in civil cases were allowed to appear by counsel, and by subsequent statutes, counsel were required to be "*virtuous, learned, and sworn to do their duty*," the better to aid the court and serve their clients. The lawyer appears by admission of the court, and has ever been held to the strictest accountability to his client, and to be "peculiarly amenable to the censure and animadversion of the judges." But the lawyer has his rights, as well as the judge, and often in later as well as earlier times, has been quite as learned and observant of the duties and proprieties of his position. His association with his unlearned client is apt to make him even more disposed to apply the deductions of common sense to the technical law than the judge himself, and thereby to bring into the judicial administration a deeper ethical reasoning. Thus it appears that all the functionaries of a well organized system for the decision of causes, the judge, the jury and the lawyer, bear their part in tempering the stern mandate of the positive law with the mild precepts of natural but enlightened equity.

V.

PROCEEDINGS IN COURT.

To call forth the *first* intervention and secure the *final* action of courts, the orderly steps of procedure have grown into systems. This procedure, like every other element of judicial administration, must follow the jurisprudence it is invoked to enforce, and be guided by its essential principles and rules. Simple at first, experience soon proved that established forms and methods better secured rights

and punished wrongs than the fitful will of judge or executioner. Even Solomon would hardly have divided personally, the disputed infant, or left it to be done by one not responsible for his actions.

Procedure in courts soon became one of the elemental guaranties of liberty and property, and its progress has been marked and useful. This procedure may be fairly divided into *Proccss and Fleading*, bringing the parties and their contention before the court: *Trial* and *Evidence*, the legal testing of their rights; and *Judgment* and *Execution*, the final ending of the litigation.

1. *Process and Pleading.*—

In the earlier cases, long before records were kept, when one man claimed that another had injured him, he threatened the aggressor with appeal to the chief or king for redress, and the defendant, not willing to have one side of the story heard without the other, appeared also, that he might defend or excuse his act, unless, indeed, he fled in admitted consciousness of his wrong. The parties stated their case as children to their parents, or pupils to their schoolmaster, and abided the judgment of their superior, who settled the dispute on the principles of natural law and justice. When, however, others were allowed to speak for them, the matters in dispute were more formally stated, and soon came to be written. This naturally led to a requirement that the complainant, before the hearing, should not only inform the respondent in writing, that he was to be called to account, but must notify him of the nature of the charge. This is the origin of Process. The form and substance of this process differed according to the court in which it was to be used. The clumsier methods used are long since obsolete, the delays attending them abolished, and the proper parties brought more promptly before the Court. Now the suit may be brought and issue tendered in vacation, and final judgment entered if default be

made, without *distringas and outlawry*. This more equitable service of process is suited to our jurisprudence, but the old one was a necessary protection to rights, when it was established.

Still greater advance has been made in *Pleading* than even in Process. And this is especially true of common law pleading. While in many states of our country, the common law and chancery courts are separate; even in those states great simplification has been made. In our own State, and in most of the more progressive states of the Union, courts of general jurisdiction embrace both common law and chancery, and in our own the distinction in the process and general proceedings in both classes of cases is abolished by the Code and supplanted by the "*Civil Action.*" The essential difference between law and equity is indeed not abolished, and could not be overlooked by any tribunal adjudicating and enforcing positive law. "Equity," says Grotius, "is the correction of that, wherein the law by reason of its universality is deficient." And though no distinct equity courts existed in any judicature until they grew up in England, the same principles were recognized and enforced in the Roman and Continental tribunals, and Blackstone says they are "the soul and spirit of all law."

The common law system of pleading, like all procedure, was the offspring of the jurisprudence it was used to administer. It was full of the refining spirit of the schoolmen, then so prevalent in philosophy and religion. Not even Dun Scotas nor Thomas Aquinas could *chop logic* with greater pugnacity and zeal, or with more hair-splitting skill and pertinacity, than the old common law pleader. It was the delight of his profession. He hedged the most trivial fact about, as if to conceal it from his adversary till its discovery would be useless to him, or to defend it from attack till he wearied out the assailant. The battle of words went

on, sometimes on the skirmish line of "aforesaids" and "to-wits;" and sometimes across the intrenchments of "departure" and "variance," until frequeutly the citadel of truth was not reached at all! The difference between victory and defeat often came to be only the difference "*twixt tweedledum and tweedledee.*"

But stripped of its verbosity and refinement, it was a great and most exact system of legal logic, and well deserves careful study by every lawyer. The new system has not been hardened up by use into so coherent and complete a statement of issues for trial, as longer practice under it will evolve. But it is practically a great improvement on common law pleading. When we remember that it breathes the spirit of judicial equity, and that under it litigation is so much simplified, both in relation to parties and joinder of causes of action, whether legal or equitable, its adoption was surely wise, independent of any other merits. So the petition, answer and reply of the code are far preferable to the declaration, multitude of pleas in abatement and bar, replication, rejoinder, sur-rejoinder, rebutter and sur-rebutter of the common law. Its greater facility of amendments, prompter rule days, and more liberal practice, is in strong contrast with the dilatory pleas and technical niceties of our forefathers. In its fundamental nature, it is the same as the old common law pleading, but stripped of its verbiage and clothed in the garb of common sense. The legal facts constituting the cause of action are all that a petition needs, and a sufficient traverse is a denial of each and every allegation in the petition contained. Sometimes, in the hands of a real pleader, a single page of legal cap may contain all the required averments or denials. Even equitable cases may be stated in one-tenth of the space of an old bill in chancery. And yet the whole system is a recognition of the equitable construction to be given to the positive law.

But there is, in my judgment, in our code one great defect. Why should pleadings be sworn to? The unprofessional client, if left to make his own statements, would put in all the evidence. His attorney puts in only the legal facts necessary to the cause of action, and the oath of the client is simply perfunctory. He is not testifying, and if his allegations are denied, he has to prove them the same as if they were unsworn. It is different in answers in chancery, for there the sworn answer is evidence. The pleading is not strengthened by verification in the mind of anyone—counsel, judge or jury. It tends to cheapen oaths, degrades their sanctity, and ought to be abolished.

2. *Trial and Evidence.*—

The ancient *trial* of causes is a curious and interesting study. Aristides was banished from Athens by a *black ball*, simply because a citizen was tired of hearing him called "the just." Milo was expelled from Rome, because his counsel was afraid of the rival faction, and Milo rebuked Cicero when, in his exile, the orator sent him the most famous speech of ancient forensic eloquence, by saying, "*it is the greatest speech ever written, and if it had ever been delivered, I should not be here.*" Jesus of Nazareth was put to death because the mob shouted, "crucify him! crucify him!" And in the beginning of our own jurisprudence, the methods of trial would startle the common sense and outrage the ideas of this age. The rude jury trial of the Saxon was not without merit, and has ripened into the modern jury trial. But many other methods were resorted to in civil, criminal and ecclesiastical cases, for the professed ascertainment of truth as the foundation of legal judgment. The thumb screw, torture, fear of death, were thought to be legitimate means of *coaxing* truth from a suspected criminal or recusant. The ordeal of fire or water was thought to be sure purgation, for the Hebrew children passed un-

scathed through the fiery furnace, though heated seven times hotter than it was wont to be; and if the witch or the heretic when thrown into the water failed to drown, execution followed such sure evidence of guilt. And so in common law courts, the wager of battle settled rights, for the strongest arm could not be wrong. Many other methods of trial rudely sought to arrive at truth; or at any rate to gratify the lust for vengeance, or the eagerness for victory of the church, the crown or the prosecuting suitor. As juster ideas of trial grew with the advance of society, fixed rules for trials by courts in equitable cases, and by juries in law cases obtained, and the ascertainment of the judicial facts on which a just judgment ought to rest, became, in an imperfect sense, a science.

No part of that science is more important than the rules of *Evidence*, and in no part of the administration of judicial law has greater progress been made. Most of the changes in the law of evidence are comparatively modern, but nevertheless antedate the memories of all the younger lawyers of this generation. In the primitive days of the law, as already seen, each man could be a witness for himself, and like Paul, before Felix, his word was taken as part of the case. But when the modern system of European law grew up, in England at least, (unless in exceptional cases), no party could be a witness for himself. However trivial or remote his interest, his mouth was closed. He might be the only witness to the fact, but it mattered not, he was rigorously excluded. In chancery cases alone, his sworn answer was so far evidence that it had to be overcome by two witnesses. The general proposition was that parties could not be witnesses. So that very often, the only persons who really understood the transaction were precluded from uttering a word about it, and the court and the parties were left to grope outside among strangers in quest of facts in the full knowledge of the parties, and concealed from

each other to gain an advantage. That the allowance of parties to testify in their own causes is productive of much perjury, may be conceded. That their testimony is to be taken with many grains of allowance is undoubtedly true, for they testify in their own interest, and

> "When self the wavering balance shake,
> 'Tis rarely right adjusted."

But under the galling fire of cross-examination, the truth is, generally, about as well obtained from a party as from any other witness. Besides, the court or jury hearing the testimony, with the aid of the critical comment of counsel, rarely fails to give as just weight to the words of a party as to those of any other witness. But all persons *interested* were excluded, whether parties or not, and however small the interest. It can be readily seen what a flood of light, though it might be colored light, such a rule would exclude from a case. In complicated transactions of business, or the more secret transactions of social or domestic life, who could be so likely to know the truth of any matter as those interested in it? And why could not the truth of their statements be weighed as justly by an impartial court or jury as the statements of others?

Another exclusion of the old law gave courts and parties quite as much trouble, and quite as often prevented justice as the exclusion of interested parties. A particular form of religious belief was required, and he who was not orthodox was *anathama mara-natha*. A man to be qualified as a witness, was not only required to be a believer in the Almighty Ruler of the universe, but in many of the tenets of the ruling church, and almost universally in a future state of rewards and punishments. So a former conviction of crime, unless after pardon, and a conviction of perjury, even after pardon, excluded a witness; for, says Bracton, "*He ne es other worthe that es enes gyty of oath broken.*" So the marital relation excluded husband or wife from being

a witness for or against each other, except in injuries by one to the person of the other. Nor could slaves be witnesses against free persons; and in many places race differences excluded a witness from testifying where any one of the superior race was a party. All these obstructions embarrassed, and sometimes defeated the full administration of justice. They also lengthened and complicated the proceedings. Discussions by counsel, of the competency of witnesses, were sometimes almost interminable, and the record was loaded down with exceptions, that afterwards often occupied half the time of the reviewing court. In nothing has the positive law more fully recognized the teachings of natural law, or more efficiently aided procedure in the ascertainment of truth and the administration of justice, than in the abolition of the old barbarous methods of trial, and in the amelioration of the old unphilosophical rules of evidence.

3. *Judgment and Execution.*—

The final determination of the court is *final judgment*, and its enforcement is *execution*. Of course, judgment must follow the pleadings, facts and findings on which it is based, and is vitalized by the law which commands its rendition. Judgment, therefore, is not only the full fruition of jurisprudence, but the sanctioning mandate of judicature. It settles rights, and is the law of the state, as valid as to the parties and subject matter, as if it were an enactment of the legislative power of the sovereign state. Whether it transfers property, abridges personal liberty, or takes life, it is supported by the whole civil, or if need be, military power of the body politic. In the rendition of judgment, the court has the same right of equitable construction of positive law, as in other branches of procedure, and no more. And so in the execution of the judgment. Jurisprudence has long since modified the severe judgments and

merciless executions of the early law, not only in civil but in criminal cases, and courts of procedure have gladly administered the change. All this is the result of a more equitable jurisprudence and procedure. Imprisonment for debt in civil cases, unconnected with fraud or tort, whether before or after judgment, has disappeared. The hurdle and the fagot are no longer weapons of criminal executions, much less starvation, mutilation and branding. The gallows remains, but does its work without public pomp. Attainder of blood is no more, and confiscation of property not practically inflicted on treason itself.

The judgment and execution as to property, partakes also of the temper modern times have produced. Artificial restraints upon alienation formerly protected real property from the lien of a judgment, and from sale upon execution; now the commercial mobility of all property subjects all species alike to sale for debt. Formerly, though real property could not be sold for debt, chattles could be, though the family householder was left without a bed or a kitchen utensil.

This, perhaps, tedious review of the principles and progress of jurisprudence and procedure, may remind us all that law is a science and an art, progressing with the civilization which produced it, and with that by which it is maintained.

VI.

OHIO COURTS.

The part taken by this Association, in proposing and aiding the adoption of the Judicial Amendment to the Constitution of Ohio, will, I hope, excuse an allusion to it in the Annual Address of your President. The late District Court was felt to be an unsatisfactory tribunal, not by reason of any objection to its judges or its general jurisdic-

tion, but by reason of its lack of time to properly perform its duties, owing to other engagements in the Court of Common Pleas. Business had also largely accumulated in the Supreme Court, and some remedy for these evils was sought. After several years of investigation, discussion and reflection, this Association proposed the Amendment, which the Legislature substantially approved, and on submission to the people they adopted. With many it was not their ideal of perfection, but it was believed to be the best system attainable. There were some, and your President acknowledges himself to be one of them, who believed that there ought to be but two courts of general jurisdiction within the State, and who wished to see them made, so flexible in organization, as to be competent to do the whole business of trial courts and courts of error. But this involved an amendment to the constitution. All felt that there was no sure and efficient remedy short of that. The Supreme Court might be constituted with a greater number of judges, but a majority would be required to render a decision, and five would be likely to be as expeditious as fifteen. So the increase would not relieve the court. All jurisdictions, except the privileged writs, might have been taken from the District Court so as to leave it "a barren ideality," but that would have been a practical fraud on the constitution itself. The trial court, the Common Pleas, might have been clothed with final jurisdiction, except in a few cases to be taken direct to the Supreme Court. But one had always been accustomed to an intermediate court of appeal in equity, and error in law cases, and doubtless the people would not have voted to abolish the District Court, without substituting some other intermediate court. All law, constitutional and legislative, is the result of compromise, and compromise produced and adopted the late amendment. I fully believe that under all the conditions, nothing better could have been done, and feel no disposition to regret my own part in the work.

It is by far the most flexible system we ever had in Ohio, and if it were possible to induce the people to vote the abolition of the Probate Court and the transfer of its jurisdiction and duties to the Common Pleas, the system would be as near perfection as judicial systems usually attain. But the people are wedded *by* the Probate Court, and have become wedded *to* it. Taking our judiciary system as it is, the Legislature has full power to provide for all the demands of the law and the changing interests and wants of the commonwealth. Should an increase of the judges of the Supreme Court ever be needed, the court can constitutionally be divided, so that practically two, or even three Supreme Courts of error may divide the business among themselves, without producing inharmonious decisions, and all be sitting at once for the despatch of business. It can be made as flexible and efficient as any court of error in the world, if the Legislature always wisely organize the court, and the people always wisely choose the judges.

Of all the other courts, it can be equally said, they are whatever the Legislature and the people choose to make them. The organization and jurisdiction of these courts inferior to the Supreme Court, is a matter of quite as much if not more importance than the organization and jurisdiction of the Supreme Court itself. They are nearer the people and their businees, and their efficiency will not only facilitate the administration of justice, but lighten the labor of the Supreme Court. If the business of the Common Pleas, the great trial court, where the parties and the witnesses generally are, and where the transactions in litigation usually occur, be divided generally into law and equity cases, the most efficient system, it is suggested, would be to provide for error to the Circuit Court in jury and appeal in equity cases. New trials may be granted in jury cases in the trial court, but no appeal, not even in contested will cases, ought to be tolerated. If a new trial be refused by

the trial court in a jury case, it can be assigned for error, and a bill of exceptions be taken, and the case carried on error to the Circuit Court. If the judgment of the court below be affirmed, there let the matter end, unless the Supreme Court *allows* it on motion for leave to be taken up to that court on error. When two courts—four judges—have held that the verdict of the jury was right, the presumption that this two-fold ruling is not erroneous is too strong to permit error to the Supreme Court to be had as a matter of course. And let the rule be the same, where the case comes up by appeal from the Common Pleas to the Circuit Court. But on the contrary, if the Circuit Court in either case reverses the judgment of the Common Pleas, let the defeated party go back for another trial in the Common Pleas, or go to the Supreme Court on error without leave, at his own option. Where the two lower courts have decided differently, let the third, the court of last resort, settle the difference between them. Let there be *no appeal* to the Supreme Court in any case; and when a case is taken to that court *on error*, let it not go upon the evidence, so as to make it in effect a re-trial of the cause, but only on a finding of the facts in the court below. Very little legislation is needed to conform our present system to this plan, and make it logical and uniform.

This plan in jury trials, gives the verdict of a jury decided by two courts to be just, and based on sufficient evidence, and on such test held to be final; and in equity cases, the same result may be reached by a motion for a re-hearing and an appeal. And then finally, to secure a uniform rule of law throughout the State, error may be had to the Supreme Court. In the trial court we have witnesses, a jury and one judge. For reviewing the evidence and the law, we have a court of error and appeal, consisting of three judges. And for final settlement of questions of law for the State, we have a court for the correction of

error, consisting of five judges. It is a pyramid of justice, with witnesses, facts, jury and *judge* at its base; and as we go up, witnesses, facts and *three* judges, but no jury; and when we reach the summit, facts and *five* judges, but neither witnesses nor jury. We are in the unclouded atmosphere of law, based on facts unobscured by the passions of witnesses and the excitements of trial, but found by the judgment of the lower court to be true.

But our political system is duplex, and we have a State and National government. And so whenever a question involves federal relations or law, the case may go to the Federal Courts to insure impartial justice to the inhabitants of all the states alike, free from local prejudices, and ruled by the general, not the local law. Under this diversified system of jurisprudence and judicature, we have a forum for every legal right, and a barrier against every legal wrong. In the court of *pie poudre*—the justice of the peace—the domestic relations court—the Probate, the social and civil rights court—the Common Pleas, the reviewing court—the Circuit and the final Supreme Court of Error, the person and property of the citizen find sword and shield from the cradle to the grave. In the wider field of federal jurisdiction, the political, inter-state, national and inter-national relations of the people are defined in the catholic spirit of general jurisprudence, and protected by the strong arm of sovereign power.

On motion the report of the Committee on Admissions was passed, the committee not being ready to report.

The Secretary, J. T. Holmes, presented his report as follows:

COLUMBUS, OHIO, *Dec.* 29, 1884.

GENTLEMEN OF THE STATE BAR ASSOCIATION:

In making report according to the requirements of our Constitution and By-Laws, my first duty seems to be to state a fact well known to each of you, to-wit: That the report of the proceedings of the last Annual Meeting was put into print and distributed—a copy being mailed to each member—during the month of February last.

Since the publication of the report, the past year has been one of comparative quiet in the Secretary's office.

Excepting the supervision given the printing of the memorial presented to the General Assembly with reference to the Circuit Courts; and excepting the meeting called by your President to take action upon the death of Mr. Justice Swayne, and the publication of the report thereof, copies of which are herewith submitted, the duties of this office have been confined to routine correspondence, very brief in character and not such as to require further attention in this report.

As I stated in my first—oral—report at the Toledo meeting in July, 1881, I am still able to say that the Secretary has "answered every communication received in regard to matters touching the Association, and has endeavored to discharge all his duties under the Constitution."

Following are receipts and disbursements:

RECEIPTS.

1883.	Dec. 28.	To balance from last account	$	2 78
"	" "	" cash from Treasurer . . .		9 50
"	" "	" M. N. Odell, Toledo, dues		2 00

1884. Jan'y. 2.		" J. M. Tibbetts, Columbus, dues	4 00
"	" "	" J. O. Troup, Bowling Green, dues	2 00
"	" 22	" cash from Treasurer . . .	200 00
"	" 29	" L. H. Pike, Toledo, dues	2 00
"	Feb. 1	" Jas. L. Bates, Columbus, dues	2 00
"	" 20	" cash from Treasurer . . .	250 00
"	March 10	" J. I. Throckmorton, Columbus, dues	6 00
"	" "	" cash from Treasurer . . .	100 00
	Total		$580 28

DISBURSEMENTS.

1883.	Dec. 28.	By writing tablet	$ 30
"	" "	" paid O. L. P. Co. printing	9 50
"	" "	" " S. N. Field, messenger	5 00
1884.	Jan. 1.	" paid S. N. Field, messenger	5 00
"	" 29	" paid G. A. Fairbanks, clerk	1 00
"	" 30	" " Fred'k Blankner, services	15 00
"	Feb. 4	" paid Chas. G. Lord, Mgr. O. L. P. Co.	100 00
"	" 13	" paid postage Mr. Harrison's address	10 00
"	" 18	" paid Chas. G. Lord, Mgr. O. L. P. Co.	60 00
"	" "	" paid telegrams to and from Mr. Newbegin	1 08
"	" 20	" paid paper and express on addresses	1 60

1884.	Feb. 23	"	paid Chas. G. Lord, Mgr. O. L. P. Co.	100 00
"	" 26	"	paid Chas. G. Lord, Mgr. O. L. P. Co.	147 95
"	" 27	"	paid postage	15 00
"	March 1	"	paid postage	11 00
"	" 7	"	paid express pkg. to Judge Stuart	45
"	" 10	"	paid Geo. B. Okey, assist.	25 00
"	" "	"	paid G. A. Fairbanks, "	5 00
"	April 15	"	paid binding books . . .	4 00
"	July 15	"	paid printing Swayne memorial	12 50
"	Sep. 9	"	paid postage	1 00
"	Dec. 8	"	paid postage (600 wrappers)	6 89
"	" "	"	paid Bessie Sullivant posting 1,000 circulars . . .	4 00
"	" 29	"	paid telegram to Mr. Earnhart	25
	Total			$541 52
	Balance in hand			$38 76

Respectfully submitted,

J. T. HOLMES, *Secretary.*

HON. NOAH H. SWAYNE.

MEMORIAL PROCEEDINGS OF THE OHIO STATE BAR ASSOCIATION.

SUPREME COURT ROOM,
COLUMBUS, *June* 16, 1884.

Pursuant to the call of its President, GEN. DURBIN WARD, the Ohio State Bar Association this day assembled to take appropriate action upon the death of HON. NOAH H. SWAYNE, late one of the Justices of the Supreme Court of the United States.

The following letters were read by HON. R. A. HARRISON:

CINCINNATI, *June* 15, 1884.

Hon. R. A. Harrison:

DEAR SIR: I regret that I am unavoidably detained in Lebanon to-morrow in an unexpected application for an injunction. Postponement is impossible. You must apologize to the Bar Association for me. It is painful to be absent, and nothing but absolute necessity constrains me.

Very truly,
DURBIN WARD.

COLUMBUS, *June* 13, 1884.

Hon. D. Ward:

MY DEAR SIR: It would give me personal satisfaction to attend the meeting of the Bar, but my deafness and infirmaties will prevent me from either attending, or if attend-

ing, accepting the very honorable position which you suggest.

Thanking you personally for your kindly remembrance of me, I am, as for long years passed,

Very Truly Yours,

J. R. SWAN.

In the absence of Gen. WARD, on motion of Mr. HARRISON, Governor HOADLY was elected Chairman, who, upon assuming the Chair, delivered a eulogy upon the life, character and public services of Judge SWAYNE.

On motion of HENRY C. NOBLE, Esq., a committee of nine members, of which Hon. ALLEN G. THURMAN was Chairman, was appointed to prepare suitable memorial and resolutions.

The committee, consisting of Hon. ALLEN G. THURMAN, Attorney General LAWRENCE, HENRY C. NOBLE, Esq., P. C. SMITH, Esq., Hon. R. A. HARRISON, Gen. T. E. POWELL, Gen. E. B. FINLEY, L. J. CHRITCHFIELD, Esq., and Hon. E. F. BINGHAM, then withdrew, and during their absence addresses, touching the life and character of JUDGE SWAYNE, were delivered by T. W. TALMADGE, Esq., and Hon. JAMES, E. WRIGHT.

The committee then reported as follows:

"NOAH H. SWAYNE, who died in New York City on the evening of June 8, 1884, in his eightieth year, was an ex-Associate Justice of the Supreme Court, and had been one of the most eminent members of the Bar of Ohio. It is, therefore, in accordance with custom, and our desire, that we assemble to-day to place on record some memorial of his professional career, and pay our tributes to him as a brother.

Justice SWAYNE was born in Culpepper county, Virginia, of Quaker parentage, on the 7th day of December, 1804.

His father died when he was four years of age, leaving

him to the care of his mother, who was an excellent woman of marked vigor of mind, who carefully watched over the education of her sons. After attending school until he was thirteen years old, he entered an academy in high repute among the Society of Friends, in Waterford, Virginia.

"At fifteen years of age he commenced the study of medicine, but the death of his preceptor at that time led him to abandon that pursuit. He returned to school at Alexandria, where, under a good classical instructor, he made a thorough preparation for college. The failure of his guardian prevented his entering upon a college course, and he was again disappointed in his purposes of education. He then became a student of law, at Warrenton, in the office of JOHN SCOTT and FRANCIS P. BROOKS. One of his colleagues was HENRY S. FOOTE, afterwards Governor and United States Senator, of Mississippi, who continued an intimate friend until his death.

"After he was admitted to the Bar in Virginia, in 1823, owing to the existence of slavery there, he resolved to remove to the Sate of Ohio. He spent the year of residence necessary before he could be admitted to practice in this State at Zanesville, and then removed to Coshocton, and entered upon the practice of law there in 1825.

"His success was considerable and immediate. He was appointed Prosecuting Attorney of Coshocton county in the first year of his practice, and in 1829 was elected to the House of Representatives of the State from that county.

"In 1830, President Jackson appointed him the United States Attorney for the District of Ohio. As the United States Courts were then held in Columbus, he removed to this city, and remained a citizen of Columbus until after he removed to Washington as his place of residence, subsequent to his appointment as a Justice of the Supreme Court.

"In 1832 he was married at Harper's Ferry, Virginia, to Miss Sarah Ann Wager, a lady of cultivation, of great moral worth and superior judgment. His wife was the owner of slaves at the time of their marriage, but agreeing with her husband as to the wrong of slavery, they were all emancipated.

"He was now fully launched upon the duties of his profession and became eminent both in civil and criminal practice. His earlier career was marked by his ability as a jury lawyer. His cross-examination of witnesses and his addresses to the jury attracted great attention and admiration. He was also an industrious reader of cases, and from the first carefully noted the points decided upon the various questions which arose in his examinations. These he so arranged and preserved that he could refer to them upon a moment's notice, and was able to produce precedents and authorities which, in that day, made him a formidable opponent in *nisi prius* practice. He was employed in many of the leading cases arising in Central Ohio, both in the State and Federal Courts, and was either associated with or opposed to EWING, STANBERRY, HUNTER, GODDARD, WILCOX, SWAN & ANDREWS, CHASE, CORWIN, FOX, THURMAN, GREEN, OLDS, and many others of that generation of lawyers, as well as many of the generation who succeeded them and remain.

"In February, 1862, President Lincoln appointed him an Associate Justice of the Supreme Court of the United States, which appointment was unanimously confirmed by the Senate. He occupied this position and performed its varied duties until January, 1881, when he retired, under the provision of the statute for that purpose. Besides his professional duties thus briefly sketched, he performed many and varied public services.

"From 1837 to 1840 he served as a Fund Commissioner of the State of Ohio, with Alfred Kelly and Judge

Gustavus Swan, at a very critical period of the financial affairs of Ohio.

"He also aided in establishing the Institutions for the Education of the Blind and Deaf and Dumb, and the first Asylum for the Insane.

"At the outbreak of the War of Secession he gave his whole time in aiding Governor Dennison to put troops in the field, and felt a deep interest in the event. His eldest son and partner, with his entire approbation, went into the service, and served throughout the war with distinction.

"As Justice of the Supreme Court his circuit covered a large extent of territory, and at one time he had assigned to him another circuit, which required him to hold court in New Orleans and other Southern cities.

"His labors were arduous, but he always performed them with cheerfulness and promptness. He was greatly aided in the decision of his cases and the writing of his opinions by the practice he had followed of preserving a reference to all authorities he had examined in the preparation of his cases at the bar.

"His services upon the Supreme Bench are best set forth in the language of Chief Justice Waite upon his retirement:

"'HON. JUSTICE SWAYNE took his seat upon the Supreme Bench at the beginning of the late Civil War, when the Chief Justice was considerably more than eighty years of age, and four out of five of the associates were either over, or but little under, seventy. He came fresh from a large practice at the Bar, and brought with him an unusual familiarity with adjudged cases, and settled habits of labor and research. As might have been expected, he soon became one of the most useful members of the court, and took an active and leading part in all its work. During the nineteen years of his judicial life, both public and constitutional law has been presented to the court in a great variety of phases, and each successive term brought in new

cases and its consequent new questions. What part he bore in this important service, and how well he bore it, is best shown in the pages of the thirty-seven volumes of our reports which have been filled since he came on the Bench. Being favored with uninterrupted good health and great capacity for endurance, he has rarely been absent from his seat here, or in the consultation room when required, and never except from necessity. His record as a judge is consequently the record of this court during his service, and in his voluntary retirement he can have the satisfaction of feeling that his judgments here and elsewhere have been, as he believed to be, right. If at times he differed from his associates, he could always give a reason for what he did. His courtesy of manners on and off the Bench will never be forgotten, and he carries with him, as he leaves the court, the esteem of every one of his associates. It has been his good fortune to be not only a student of the law, but of general literature as well. He has always been a welcome guest wherever he has gone, and we hope he may live long to enjoy the reputation he has won, the society of his family and friends, and the pleasure of his books.'

"And the Bar of that court declared that their sentiments of sincere respect for MR. JUSTICE SWAYNE had been inspired by the large capacity, and full and accurate learning, the patient and persistent investigation, the anxious desire to do justice, the genial and benevolent courtesy he had uniformly accorded to the members of the Bar which distinguished him throughout the long period of his service on the Bench of the Supreme Court.

"These are the same characteristics that had marked his career as a lawyer of the Ohio Bar, and gave promise of his great usefulnes as a judge.

"JUSTICE SWAYNE was a man of fine physical development and personal appearance, cheerful and pleasant manners, cordial greeting, warm and constant friendship to

old and young alike. He was fond of conversation, and loved to discuss questions of literature and history. He was especially interested in the literature and history of the people of Ancient India and of Assyria. He had that thirst for learning which so often accompanies an active lawyer's career, and to the end of life delighted in these and similar studies.

"After he retired from the Bench his wife died in Washington, and thus broke up his home, which had been noted for its refined and genial hospitality. He removed to New York to spend his remaining days with his daughter, and had a room at the offices of his son, where many of his old friends called to enjoy an hour with him.

"In his conversation of late years he often spoke of the approaching end of life, without fear, but with evident sadness at the thought of parting with his friends. He said that he had the full measure of days, and more than the usual prosperity of life; that his domestic life had been one of great enjoyment, and that his family were all comfortable and honorably settled in life; that he had always had warm and dear friends, and his full share of honors and distinctions, and that he had no right, as he had no disposition, to complain that his life was near its close.

"In this spirit he passed away, and it remains only for us to pay this tribute to his memory:

"*Resolved*, That we have heard with deep sorrow and regret of the death of NOAH H. SWAYNE, who, for the greater part of his life, was a distinguished and greatly-esteemed citizen of this State, and one of the ablest and most learned members of our Bar; and who, retiring from the practice of the law, became an Associate Justice of the Supreme Court of the United States, and for nineteen years discharged the duties of that high office with such marked ability, learning, industry, courtesy and impartiality as secured him the universal respect and esteem of his countrymen. To the Nation at large he became

known as a great Judge. By the Bar of Ohio he is also remembered as a great lawyer, whose strong and cultivated intellect, persuasive eloquence, untiring industry, honorable methods, genial manners and encouragement to young beginners, entitle his memory to be honored and cherished by the profession.

"*Resolved*, That this minute be presented to the Supreme Court of Ohio and Supreme Court Commission by the Chairman of this meeting, with the request that it be entered upon the Journal of the Court, and that the Secretary transmit a copy to his daughter."

On motion the Memorial and Resolutions were unanimously adopted.

The following letter from Judge Matthews was read by Mr. Harrison:

GLENDALE, *June* 13, 1884.

MY DEAR SIR: I am just in receipt of your note of yesterday, requesting my attendance at the meeting of the State Bar at the Supreme Court Rooms, in Columbus, next Monday, to participate in its proceedings on the occasion of the death of the late JUSTICE SWAYNE. I very much regret that it will be impracticable for me to be present, as I should wish in that way to testify my respect for the memory of my justly distinguished predecessor. I beg to express my hearty concurrence in the sentiments entertained by the Bar of Ohio to whom, both in person and in fame, he was so well and favorably known, and my cordial sympathy with them in this mark of respect for the distinguished and honorable man, who has recently passed from among us.

Very truly yours,

STANLEY MATTHEWS.

HON. DURBIN WARD,

Cincinnati, Ohio.

Appropriate addresses were also delivered by Mr. Noble and Mr. Harrison.

On motion adjourned.

GEO. HOADLY,
President pro tem.

J. T. HOLMES,
Secretary.

The Chair submitted the following letter, which was read by the Secretary:

COLUMBUS, OHIO, *Dec.*, 30, 1884.

GEN'L. DURBIN WARD, *Prest. State Bar Ass.:*

My Dear Sir:—In obedience to the expressed wish of the Franklin County Bar Association, I beg leave to present to you a copy of the proceedings of the Association relative to the life, death and character of Joseph R. Swan, and to request that you lay the same before the State Bar Association.

Joseph Swan, in whose honor these proceedings were had, and the Memoir and Resolution embodied therein, adopted, occupied a very important place in the legal history of Ohio. He was well and favorably known to the Bar as a practicing lawyer, as a Judge of the Common Pleas and of the Supreme Court, and still more was the compiler and annotator of the Statutes, and as author of several valuable works on pleading and practice in the various courts of the State. One of these, the Treatise for Justices, carried his name and fame beyond the confines of the profession, into every circle where questions of law or of business were mooted, and in these circles his word had almost the force of Statutes.

The tribute to his memory which has already been paid, was well earned by a life of honor and usefulness, and it is fit that the State Association of his brethren of the Bar should stamp with the seal of their approbation what has been so well said of him by his immediate neighbors and friends.

Yours very respectfully,

M. A. DAUGHERTY.

Upon motion, the Secretary read the Memorial as follows:

BOARD OF TRADE ROOMS, CITY HALL,
COLUMBUS, OHIO, *Dec.*, 19, 1884.

The Bar Association, under a call by the President, met to take proper action in relation to the death of Hon. JOSEPH R. SWAIN; the President in the chair, and T. P. Linn acting as Secretary.

President Daugherty stated the object of the meeting.

R. A. Harrison moved that a committee of seven be appointed by the chair, to prepare and submit to adjourned meeting of the Association, a minute on the life, character and public services of Judge SWAN. The motion was agreed to, and the chair appointed R. A. Harrison, A. G. Thurman, C. N. Olds, H. B. Albery, J. H. Outhwaite, E. F. Bingham and H. C. Noble.

On motion of Mr. Harrison, J. W. Andrews was added to the committee, and made Chairman thereof.

Mr. Noble suggested that the committee meet at the library of Mr. Andrews, on next Monday, at 3 o'clock P. M., which was agreed to.

On motion of G. H. Stewart, it was agreed that the Bar should attend the funeral of Judge SWAN, at Trinity church, Sunday afternoon.

On motion of Mr. Thurman, the meeting adjourned to meet at Common Pleas Court Room, No. 3, next Tuesday morning at 10:30 o'clock.

COMMON PLEAS COURT ROOM, No. 3,
COLUMBUS, OHIO, *Dec.* 23, 1884.

The Association met pursuant to adjournment.

Thereupon, Mr. Harrison from the committee, reported the following Memoir and Resolutions:

By the death of Judge JOSEPH R. SWAN, on the night of

Thursday, the 18th instant, the State of Ohio, and especially the city of Columbus, of which he was a resident for sixty years, is called to mourn the loss of one of her most distinguished and useful citizens. In attempting to express our appreciation of his private and public character and services, and our admiration and reverence for his memory, the whole community truly and deeply sympathize and participate.

Judge SWAN was born December 28, A.D. 1802, in Oneida county, in the State of New York. He received an academical education at Aurora, in that State, and where he began the study of the law; and coming to Columbus in 1824, when its population was about eighteen hundred, entered the office of his uncle, Judge Gustavus Swan, (then and for many years one of the ablest lawyers in Ohio), and was not long after admitted to the Bar. He at once commenced the practice of law in Franklin and adjoining counties. On entering the profession, he took a respectable, and soon obtained a high position as a lawyer. The Court of Common Pleas of Franklin County, (then composed of a President Judge and three Associates), manifested their confidence in his integrity, ability and learning, by appointing him, in the year 1830, to fill the office of Prosecuting Attorney, which was then regarded as a post of great importance and of honor. In January, 1833, the General Assembly passed an act for the election by the people, instead of an appointment by the court, of a Prosecuting Attorney for each county in the State. In October of that year, Judge SWAN was elected Prosecuting Attorney. He faithfully discharged the duties of the office until his election, in the year 1834, by the General Assembly, *with the approval of the Bar*, Judge of the Court of Common Pleas of a judicial circuit then consisting of the counties of Franklin, Madison, Clarke, Champaign, Logan, Union and Deleware. He was re-elected by the Legislature in 1841.

Judge SWAN's large natural abilities, extensive and accurate legal and general knowledge, judicial cast of mind, and balance of character, eminently fitted him for the Bench. And in point of fact, as a judge, either in a court of first instance, or in a court of final resort for the correction of errors, he was almost faultless. Whilst he was courteous and just to the Bar, he preserved the rights and dignity of the Bench, and thus always commanded the respect due from the Bar to the Bench. The exercise of the *ministerial* power of his office was not necessary to secure decorum in any court over which *he* presided. Regard for the man, and his firmness, impartiality and honesty, which were universally recognized, insured, better than power could have done, respect for the law and him by whom it was administered. No judge was ever more diligent in the transaction of business, nor was any one ever more deeply impressed with the grave responsibilities and delicate duties of the judicial office. His disposition and capacity for work were extraordinary, and he kept up with the business in the court of every county of his circuit. While he entertained a just regard for precedents, he always tried to base his decisions upon sound reason and just principles, and to work out justice between the parties. An "array of authorities" did not alarm him; indeed, so thoroughly opposed was he to anything like display, at any time or any where, that he disliked an "array" of cases by counsel in argument, or by court in decisions. He was, in the very highest sense of the word, an upright and brave judge, —bravely upright. Hence, he never allowed popular passion or prejudice to prevent the firm and equal administration of justice according to law. He had a practical clearness of vision, and in the investigation of a cause his mind at once rejected the irrelevant and the weak. He had one of those vigorous, logical minds which delight in orderly arrangement. He had a marked capacity for sound classifi-

cation of facts as well as of legal principles. Upon the statement to him of a case, his mind went straight to the subject-matter—the material points—of the legal issues. No judge ever observed more scrupulously the maxim: "*If you judge*, UNDERSTAND." Without giving offence, he held a strong curb-rein over excessive loquacity in the trial of causes; and he consistently set a good example to the Bar, by never speaking from the Bench until it was necessary and appropriate for him to speak, and he had something to the point to say.

Judge SWAN'S *character* largely made him the judge he really was—a model judge. His weight of character as a man and a citizen was felt as a power in the administration of justice in the courts in which he presided, the traditions of which will long survive him. His judgments as a magistrate were in accord with his life as a man. It is not, therefore, a matter of wonder that during the many years he occupied the Bench, he had the entire confidence and respect of the Bar and People throughout his judicial circuit. In fact, his special qualifications for the position of judge, as shown by his mode of exercising its powers and discharging its duties, soon gave him a State reputation; so that when the first edition of his justly celebrated "Treatise" appeared, it needed nothing but the then established fame of its author as a jurist to favorably introduce it and put it into immediate use.

In the latter part of 1845, Judge SWAN resigned the office of judge of the Common Pleas, and entered into partnership with Mr. John W. Andrews of this city in the practice of the law, which he pursued with energy and success until 1854. During this period of time, the confidence of business men in Judge SWAN'S fairness and wisdom was shown by their submission to him, as referee, for final decision, important matters of disagreeament.

In October, 1854, under the excitement produced by

the passage of the Kansas and Nebraska bill, so called, and the formation of the Republican party consequent thereon, and of which he was one of the founders, he was nominated for the post of Judge of the Supreme Court, and elected by nearly eighty thousand majority. On the Bench of the Supreme Court he fully sustained his earlier reputation as a judge, and probably held as high a place in the estimation of the Bench, the Bar, and the public, as has ever been reached by any one of the many distinguished men who have adorned our judicial history. Wise, patient, firm, impartial, courteous, he never lost sight of the dignity of his high office, to which he brought unusual native vigor of mind, large stores of learning, untiring industry, and the most conscientious regard for the rights of litigants, and abhorrence of all injustice and wrong. His term of office closed at a period of unusual polititial excitement. North and South were arrayed against each other, and freedom and slavery were about to fight their great battle. In 1859 the case *ex parte Bushnell*, 9 Ohio State, Rep. 78, came before the Supreme Court of the State. It presented the question of State sovereignty in conflict with the sovereignty of the Nation. The Southern leaders relied for the solution of this question upon *legislative* nullification and secession; while *some* of the Northern anti-slavery leaders looked for relief to *judicial* nullification; and hence it was sought in this case, under a writ of *habeas corpus* issued from the Supreme Court of the State, to override a judgment of the District Court of the United States for the Northern District of Ohio, and to discharge from jail a prisoner who had been convicted and sentenced by such court for a violation of one of the sections of the Act of Congress of 1850, known as the "fugitive slave law." It was a dangerous crisis; and preparations for a conflict were made on both sides, as it was believed that in case of a decision by the State Court in favor of a dis-

charge of the prisoner, there must be a collision between the State and National authorities. Judge SWAN was then Chief Justice of the Supreme Court, and he delivered the opinion of the Court (a bare majority concurring), holding that the State could not interfere with the action of the Courts of the United States within their well-established constitutional limits, and the application for the discharge of the prisoner was refused. This was probably the most important act of Judge SWAN's life, and showed the stuff of which he was made. To his mind, a simple question of law was presented for decision, and with *that*, sectional passions, political excitement, partisan conventions and leaders had nothing to do. It was above them all, and must be decided upon well-settled principles of adjudication that were independent of and would survive them all. It was so decided, and at the Republican Convention that assembled soon after, under the excitement of the moment, Judge SWAN was defeated as a candidate for renomination, and Judge Gholson was nominated in his stead. The rebuke did not much disturb him, however; for, he knew that his vindication would come, and he lived to see it. There is probably no respectable court or lawyer now that would venture to question the soundness of the decision of the court in the case referred to.

After thus leaving the Bench, Judge SWAN never resumed the active practice of his profession, and he declined to accept an appointment to the Supreme Bench, as well as a Republican nomination as a candidate therefor, both of which were tendered him. It has been said that the English and American *ideal of a judge* is one of the best and purest ideals that the development of society has ever produced in the world; that such ideal *can be actually realized* is proved by the career of such judges as Judge SWAN.

In 1860 Judge SWAN was elected President of the Columbus and Xenia Railroad Company; and while he held that

position, he also acted as legal adviser of the Company as well as of the Little Miami Railroad Company.

In 1869 he accepted the appointment of General Solicitor of the Pittsburgh, Cincinnati & St. Louis Railroad Company, which post he continued to fill until June 1st 1879, when his failing health compelled him to resign it. The Board placed upon their records, as an expression of their regret at his severance of official relations, the following memorial and sent a certified copy thereof, to Judge SWAN: "HON. JOSEPH R. SWAN having tendered his resignation as General Solicitor of the Company, the same to take effect June 1st 1879, the Board of Directors accept the same, but desire to place on record an expression of their sincere regret at the severance of official relations determined upon by Judge SWAN. During an official and personal connection of many years duration, the officers of the company have, one and all, been deeply penetrated by a sense of the legal learning, sound judgment, large experience, strict integrity, and unbounded kindness and courtesy which have ever marked his intercourse with his associates and the discharge of his official duties. In withdrawing from the service of the Company, he will be followed with the respect and esteem of every member of the Board, and with the sincere hope, that the remainder of his years may be as full of happiness and peace as his long life has been full of usefulness and honor."

This touching expression, by the Board of Directors, of their appreciation of Judge SWAN's character and services, and of their affectionate regard for him personally, although it comes from men who knew him for the most part only in business life, presents fairly the estimate in which he was held by his personal friends and neighbors.

In 1836 Judge SWAN published a treatise entitled, "A Treatise on the Law relating to the powers and duties of Justices of the Peace, etc.;" which has gone through eleven

editions, and has probably proved to be the *most useful* book ever published in Ohio. It is understood that before his death, Judge SWAN prepared the twelfth edition of that work, for publication after his decease. The circulation of the previous editions has been immense among the successive generations of justices of the peace in every township of the State, lawyers, county officers, judges and business men, in other states as well as our own, and it has been the model for similar works elsewhere. The influence of such a book, circulating in every neighborhood, and among all classes, in shaping the character of the people, and inculcating a reverence for law, can hardly be overestimated. The book has prevented many cases from being litigated at all, and has prevented innumerable appeals from magistrates' decisions.

On the 23d of February 1850, the General Assembly passed an act calling "a convention to revise or amend the Constitution of Ohio." It provided for an election of delegates on the first Monday of April, and required the convention to meet in this city on the first Monday of May, 1850. Judge SWAN was elected as a delegate from the County of Franklin. He was appointed a member of the committee on the Judicial Department and also on the committee on Public Debts and Public Works, the most important committess of the convention. The reports of the proceedings and debates show that Judge SWAN was a diligent and influential delegate. On several occasions he exhibited the same high moral courage and loyalty to honest convictions that ever distinguished his career as a judge.

In 1840 an act relating to the settlements of the estates of deceased persons, and another act relating to wills were prepared by Judge SWAN and enacted by the General Assembly. But few amendments of these statutes have been found necessary. These are only two of many important

statutes of which Judge SWAN was the author. No one was as often consulted as he, by members of the legislature, concerning important legislation of a non-partisan nature.

Four general revisions of the statutes of Ohio were made by Judge SWAN. As to these the commissioners who made another general revision in 1880, remark: "Meanwhile, the statutes had become so numerous, and had fallen into such confusion, that a systematic republication of the laws in force had become a necessity. Fortunately the work was undertaken by one competent for the task; and it is *only just* to say, that with the material before him, and in the absence of all power to change it, perhaps *no other man* would have been able to produce a collaton of our statutes so admirable in all that pertains to the work of an editor, as SWAN'S Statutes of 1841. In 1854–5, 1860 and in 1868, Judge SWAN performed the same task of collating and arranging the statutes in force." He published several text books in the law besides his well known Treatise. "A Guide for Exectors and Administrators," was published in 1843, and other editions afterwards." "SWAN'S Pleadings and Precedents," was published in two volumes, the first in 1845 and the second in 1850. "SWAN'S Pleadings and Precedents under the Code," which was appropriately dedicated "To the Young Gentlemen of the Bar," was published in 1860. The last named work was written in the liberal spirit in which the cival code of the State was devised and enacted, and it produced the effect which Judge SWAN intended it should, namely, the Bench and the Bar of Ohio were induced to construe the code in the spirit of the code itself, and in the light of the sensible and liberal rules suggested by Judge SWAN for the interpretation of its provisions. As a consequence, very few questions of code pleading and practice have been carried for decision to the Supreme Court.

Judge SWAN'S ability was *not*, as some presume, all in

the region of positive knowledge. On the contrary, he had much taste and capacity for literature. His appetite for general reading was something vast. His intimate friends knew that he diligently and lovingly read English literature, poetry as well as prose. He enjoyed reading works of fiction. He thought highly of modern literature as an instrument of *training* as well as pleasure.

Although, as the record of his life abundantly shows, Judge SWAN was a very industrious man, he had the air of not appearing busy, and was always at the service of a friend who sought his aid or advice. Many persons formed an erroneous impression of Judge SWAN on account of his natural reserve and reticence. Many young men, as well as middle-aged, and some men passed middle-age, can testify to his personal kindness to them, and the important aid rendered by him to them, when they most needed help.

One of Judge SWAN's most prominent characteristics was his exceeding modesty. But he was as firm in adherence to his convictions as he was modest in maintaining them. The mental faculties of Judge SWAN remained unimpaired until his death. This was owing to his superior physical and mental constitution, and his lifelong abstemious, regular and exemplary habits. Uutil death was immediately pending, he seemed to act on the conviction that as long as we are bound to this life, we are bound to be interested in the important things of this life.

Judge SWAN's career is a striking and an admirable illustration of the truth, that in life—in every pursuit and in every position in life—*force of character*, in the long-run, counts for more than mere intellectual capacity, however great or brilliant. Such a life as Judge SWAN has just closed is worth, *in its influence* what money cannot buy or give, not only to our profession, but to all professions and all pursuits, and all occupations. He has left a record of honesty of purpose, uprightness and usefulness—of fidelity to every trust and duty, whether public or private.

In every station, and always, he was the same quiet, upright, conscientious, patriotic, Christian man, loving home, friends, neighbors, country; and finding in them, and the duties claimed by them, a means of preparation for, and foretaste of that life to come which Christianity reveals, and which these earthly relationships symbolize and foreshadow. Judge SWAN was active in every good word and work that called for his sympathy, and was especially interested in whatever, in his judgment, touched the public welfare. He had his fears lest the wonderful prosperity of the country, and the vast accumulation of wealth in corporate and individual hands, should gradually change the character of the government to a plutocracy; and he frequently expressed his dread of the insiduous approach of corruption in such forms as the distribution of free railroad passes among judges, legislators and officials of all sorts, National, State and municipal, and especially of the influence of corrupt cliques and combinations for distributing fees and offices and jobs in counties and cities; but, on the whole, he was hopeful of the future, and believed that whenever public sentiment shall have been fully awakened to these or other like dangers, it will be found competent to deal with them.

The close of this long and honored and useful life was clouded by protracted illness; but the chamber of suffering was always bright with the memories and hopes that wait upon the departure of a good man, to whom death is an incident, solemn, mysterious, but still an incident only in an endless life.

Our friend having finished his work, thoroughly and well, now rests him from his labors, and his works do indeed follow him; for, he has taught us who survive him, the meaning and value of life, by setting before us a rare example of *character*, gradually formed and matured "by patient continuance in well doing."

The wife of Judge SWAN, with whom he intermarried in 1833, died in 1876. Three sons and two daughters survive. He has left them an inheritance more precious than great riches:—the record and example of a pure, useful and long life, devoted to the diligent and conscientious performance of duty.

We recommend the adoption of the following resolution:

Resolved, That the members of this Bar sincerely lament the death of Judge JOSEPH R. SWAN, and express the high consideration they entertain of his integrity, his ability, his learning, his impartiality, his industry his dignity, his love of justice, his moral courage, his kindness, his strong, common sense, his patriotism and his fidelity to every trust and duty, whether public or private, which marked his career as a Judge and public man, and his character in private life.

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M. A. DAUGHERTY,
President.

T. P. LINN,
Secretary.

MR. NEWBEGIN: I move that the Memorial be spread upon the minutes of our Association, and that the Resolutions of the Franklin County Bar be adopted by this Association.

MR. HARRISON: I suggest an amendment to that motion. Instead of "the Resolutions," insert the first resolution of the Franklin County Bar. The others are inappropriate.

The motion, as amended, carried.

On motion, a recess was taken until two o'clock, P. M.

AFTERNOON SESSION.

THE CHAIR: There was pending when the recess was taken, without disposition, the Report of the Secretary. What is the pleasure of the Association as to that report?

Moved that it be received and adopted; so ordered.

The Report of the Treasurer was called for, and upon motion was passed. The Secretary was instructed to telegraph the Treasurer, that the Association might know whether or not there was to be a Treasurer's report during the meeting.

THE CHAIR: The next thing in order is the report of standing committees, and the first of those committees is the Executive Committee. I have received from General Grosvenor, of Athens, a letter announcing that he is too sick to be here, and desiring me to make that announcement to the Association. Is the Executive Committe ready to report?

P. C. Smith, of Circleville, read a report from the Executive Committee as follows:

TO THE STATE BAR ASSOCIATION:

The undersigned beg leave to make the following report: Owing to the fact that there was very little except routine business coming within the prescribed duties of this committee during the last year, which could be attended to wholly by the Chairman, the committee have had no meeting since the one held immediately after the adjournment of the last Annual Meeting of the Bar Association, when your committee organized by electing General Chas. H. Grosvenor chairman, who, by reason of sickness, is unable to be present at this meeting, and hence the duty of making this report falls upon the other members of the committee. Your committee recommend that the next meet-

ing of the Association be held at Dayton, July 7th and 8th, 1885. Respectfully submitted,

P. C. SMITH, *Chair. pro tem.*

J. T. HOLMES, *Secretary.*

MR. NEWBEGIN approved the recommendation of the committee as to time of meeting.

Moved that the time be fixed for December.

JUDGE PIKE offered an amendment specifying Tuesday, December 29th.

MR. JONES contended that it was the province of the Executive Committee, and not of the Association, under the constitution to fix the time and place of meeting, quoting the language of par. 4 art. 14 of the constitution.

J. L. H. LONG claimed that the Executive Committee was the creature of the Association, and its reports were subject to revision and change by the Association.

P. C. SMITH suggested that the committee would adopt the recommendation of the Association. Personally he thought July a better time for meeting than the holidays.

Mr. HARRISON called attention to the fact that at Cincinnati the Association fixed upon Columbus as its place of meeting thereafter, though he favored the idea of meeting in the different cities of the State. He thought that members of the Bar outside of the cities, took more interest in the Association and should be heard on the question. Believing they would prefer the early part of July as the time, and that it would be more suitable for all, he was in favor of the report of the committee.

GEN. FINLEY opposed the view that the Executive Committee was above the Association in point of power to fix time and place of meeting, or otherwise. The language of

the Constitution might be unfortunate, but on general principles the committe was the creature of the Association.

MR. VAN FLEET took the same view.

JUDGE WILLIAMSON submitted that the Association had not fixed time and place of meeting at Cincinnati. The committee had merely shown itself open to suggestions from the Association on the subject. He had some part in the preparation of the Constitution. It was intended that this committee should have just this power. It has exercised it twice already to change during the year the time of meeting. A majority of members attending a meeting might belong to the local bars. The Executive Committee is composed of one from each judicial district, and supposed to represent the whole of the membership.

MR. WRIGHT was of opinion that the organic law must be changed before the Committee could be deprived of its power to fix time and place.

MR. HARRISON suggested that the adoption of the committee's report would not be an interference with its jurisdiction.

MR. JONES concurred in the suggestion of Mr. Harrison.

MR. SPENCE thought the claim that the committee was above the Association, in any regard, was absurd.

MR. LONG argued against the claim of such power in the committee. It was contrary to precedents and general principles and rules governing deliberative bodies.

MR. NEWBEGIN'S motion to lay the report of the committee on the table was lost.

GEN. VORIS inquired whether or not there was "any limit

as to the time we may expend in scoring before the trot begins," and called the previous question.

THE CHAIR ruled on the point of order that the Association might, at pleasure, adopt or reject the report of the committee.

MR. VAN FLEET was in favor of meeting in December. The work of the Association will so be brought nearer to the session of the General Assembly.

The amendment offered by Judge Pike changing the time from July 7th and 8th to December 29th and 30th, was then adopted.

The question then recurred on the adoption of the report as amended.

JUDGE GREEN moved to substitute Columbus for Dayton. He was opposed to traveling about the State and claimed that the objects of the Association would be better attained by meeting permanently in Columbus.

MR. SPENCE suggested Springfield, and thought the Association would help his city in several ways by meeting there.

Motion to substitute Springfield lost.

Motion to substitute Columbus for Dayton lost.

The report of the committee fixing Dayton as the place of holding the next meeting was then adopted.

The report of the committee on admissions was made as follows:

The Committee on Admissions recommend the following named attorneys as suitable persons to become members of the State Bar Association, viz:

1. R. W. Johnson, of Galion; 2. Walter B. Richie, Lima; 3. James O. Ohler, Lima; 4. John M. Sheets, Ottawa; 5. W. H. Kinder, Ottawa; 6. Charles N. Haskell, Ottawa; 7. Charles H. Scribner, Toledo; 8. W.

R. Beavis, Cleveland, on condition that he is a member of the Cleveland Bar Association; 9. Wm. H. Handy, Wauseon; 10. Charles H. Lander, Columbus; 11. T. J. Godfrey, Celina; 12. C. N. Lamison, Lima; 13. L. W. King, Youngstown; 14. R. B. Murray, Youngstown; 15. J. J. Brooks, Salem; 16. John A. Eaton, Bucyrus.

On motion the report was received and adopted with the understanding that the committee might be allowed to add other names that might be handed them.

The committee on Judicial Administration and Legal Reform, requested further time to make their report, which was granted.

Mr. Critchfield offered the following resolution:

Resolved, That the part of President's Annual Address, relating to the jurisdiction of the Circuit and other courts, be referred to the Committee on Judicial Administration and Legal Reform, with instructions to report to the association at the present meeting the committee's views in regard to the proper jurisdiction of the several courts conferred or to be conferred by legislation.

MR. SMITH, of London: That is a very important resolution. I am in favor of giving the Circuit Court all the jurisdiction we possibly can. Our business has increased and we have made a vast advancement in regard to the establishment of this Circuit Court. Now, I do not desire, so far as I am concerned, to circumscribe this Court; give it all the jurisdiction you can possibly conceive of outside of original jurisdiction. Do not circumscribe it. There is a vast number of questions opened in regard to the abolishment of the Common law, as referred to by our President in regard to the rights of married women. We finally got on to hard pan on that subject to a certain extent, but their rights are increasing. I am sorry for it, because I think it decreases marriage. But I want the

courts open so that all the rights of everybody can be heard and decided, and I am in favor of the adoption of this resolution so that this Committee may report every branch of jurisdiction that is necessary for this Circuit Court.

On motion, the resolution was adopted.

Judge Green offered the following resolution:

Resolved, That by reason of the want of certainty, want of publicity, and want of convenience of our law, the interests of the people demand that it be codified.

MR. HARRISON moved that the resolution be referred to the Standing Committee on Judicial Administration and Legal Reform.

MR. RUSSELL: Before the question is put, I would like to call upon Judge Green to make a statement of the intention and scope of his resolution. The duty of the Committee on Judicial Administration and Legal Reform would seem to make them the proper Committee for this reference, but before it takes that course, I, for one, would like to hear a statement from Judge Green as to the scope of his resolution.

JUDGE GREEN: This is a matter, it seems to me, of more interest to this Bar Association, and more interesting to the people, not only of this State, but all the States of the Union, than any other that is likely to come before this, or any other like Association. I think there has not been a State Association within the last year, and I will include the National Bar Association, meeting at Saratoga,—where this subject has not been the subject of an address, devoted especially to it, or of at least a portion, more or less, of all the addresses that have been delivered. It was the theme of Governor Hoadly's address at the Commencement at Yale College; so it was of Judge Dil-

lon's, largely, before the Saratoga Association; as it has been of others.

It has shown the proportions of a fierce fight in the State of New York. They are divided upon the subject, which is discussed pro and con. The State is flooded with pamphlets upon each side of it, and it seems to me it is a question that ought to interest this Bar Association. It is for the interest of the people.

Now, as to the want of certainty of our law, it seems to me there is nothing more necessary than to take up the last three, 38, 39 and 40, Supreme Court Reports, of this State, where we find 153 cases affirmed and 163 reversed. There is altogether too much uncertainty. I am very happy to say that the court "was constrained," as they say, more frequently to sustain the District Court than the Court of Common Pleas.

But that kind of uncertainty ought not to exist. One of two things; the law ought to be fixed, or ought to be modified so that it will be certain, so that the lower courts would not be in error as often as they are, or else we ought to have larger men for the Court of Common Pleas, or smaller ones, for the higher courts, and I have no doubt they are quite as large as the Bar can make them. I do not want them to say they are "constrained." I want them to find, without regard to Justice of the Peace, or anybody else below. So much for the want of certainty.

There is a want of publicity, it seems to me, when the fact is that several briefs that are contained in the last three reports, since the Cincinnati fire, cannot be made from any or all the libraries of this State. It seems to me, if such is the fact, there is a want of publicity. The law ought to be codified and put into a report so that we may know what it is. As our President said this morning, the laws should be postive. I do not think any code can be broad enough to cover every conceivable case, the reason is the reports are without form.

If our precedents are not broad enough to cover the field, let three or five men be appointed as a committee to codify the law into one volume.

MR. NEWBEGIN: Who shall appoint that codifying committee? the Governor?

JUDGE GREEN: I have confidence in our present Governor as a lawyer, but as a politician, I have none. I would be willing to trust him as a lawyer to appoint three or five men to codify the law. I am not deciding when or how it shall be done. My resolution only goes to the fact that the interest of the people, the interest of the Bar demands that this shall be done.

Now, as to the convenience or inconvenience of it, the same remarks that I have made in regard to the inability to-day of an attorney to make briefs will apply. But there is another great inconvenience it seems to me. I see by looking over these last reports that attorneys appear before the court and cite 105 to 110 cases. We might be relieved from all that difficulty by having that principle of law that is passed on by the court, put into a code. We want to know what it is so that we will have something to go on. They have had this very thing I suggest in force in the State of California since 1873. Half a dozen years ago, when this was proposed there was opposition, but the code came, nevertheless, and that civil code has served them well, and they would be loth to do without it. A large majority of the Bar and people are satisfied that it renders very many questions clear that without it would be in confusion. Shall the State of Ohio fail to follow in the wake of New York, as we did in their great civil proceedure? In the State of New York they have adopted it. Their Governor has been induced to veto it. It will soon follow in other States. This State certainly ought not to be following in the wake of others. We ought to stand

above the rest and set them a pattern; and let us for once say, "You have adopted ours."

MR. WRIGHT: I would like to inquire, then, why it is that we have 66 volumes of California reports? I tell you that California beats all the states in the world, except New York, and that amplification occurs because they have divided courts. I understand why 105 cases can be cited in the Supreme Court, in a moment. That is not unintelligible—simply because 105 cases, for want of legal learning, have not the slightest application. The trouble is not with the common law. The trouble is not because we have emerged from barbarism into a great civilization. It is simply because lawyers, as a class, owing to defective legal education, are behind. We would have just as many reports in ten years of the code as we have now. We would have two to one, and I say it is arrant nonsense to assert that one is unable, after looking into the books, to say what the law is or ought to be. It is true, on very close questions, we find the Supreme Court of Ohio divided in their learning. It is time, on close questions, all courts divide; it is true, on close questions, men may differ even in morals, and politics, but in the great general principles that affect mankind, men of intelligence do not differ. Do you suppose those gentlemen, my friend Carper, of Delaware, and Mr. Harrison, in five minutes conversation would differ on any well settled principle of law? No, and why? Simply because they have learning.

The common law is broad enough and good enough. What we want, is more attention paid to the recommendation of the Committee, in their report on Legal Education. When lawyers sit down in their offices and resolve to learn something, acquire a knowledge of the English language and the fundamental principles of the law, we will have no occasion for these differences. That is the first thing—the legal education of the Bar.

Now, suppose, as the gentleman said, we have, in the last three volumes of Ohio Reports, reversals of decisions of the Common Pleas. Does not that argue those men did not understand the matter, because they did not have time to make these investigations? Give these lawyers an opportunity to investigate these questions in the light of the books, and the great principles of the law, and they will have no need for codification. We have decisions on close questions, and probably they are reversed and modified, but you will find that these decisions of the District Courts, after careful consideration, are very rarely modified, and I can point with pride to men whose judicial opinions have been very seldom reversed, although they have been on the Bench fifteen years. It is only afflicting the people of the State with another such a thing as the Codifying Commission, which cost the State two hundred thousand dollars. Better put it to establishing good law colleges, where we can send our children free and educate them.

A MEMBER: Can you refer me to a case where attorneys have been on opposite sides, and they agree?

MR. WRIGHT: No two lawyers ever did agree, when one had a fee in his pocket for one thing, and one the other. Give both of those gentlemen a fee for a common cause and you will find they will not disagree.

The question on the reference of the resolution was put, and carried.

On motion, the report of the Committee on Legal Education was passed.

The Committee on Grievances not being ready to report, was allowed further time.

JUDGE INGERSOLL, of the Committee on Legal Biography, made the following oral report:

As Chairman of that committee, I am prepared to make a very brief report, although probably all the members present are aware of the work that has been done by that Committee, and the extent to which that work has been carried. You know this Association adopted a form for reaching the leading facts in the life of the various members of this Association, and ordered your committee to print a circular of that form. As chairman of that committee, I conveyed to every member of the Association, as the names are given in the last report, a blank form with an envelope and postage stamps attached to be returned to the chairman of the committee, and from that sending I have received returns to the amount of about two hundred and fifty. Out of four hundred and eighty members enrolled in the last report, I have received and put into book form the lives of two hundred and fifty members of this Association. They are constantly coming in, three or four a day. They are very conveniently bound by using one of those books that all are now in use for preserving letters by business men. They are put into this form, and may be preserved for a number of years. They adhere very firmly. If any members of the Association have not received those blanks, I shall be very happy to supply them.

On motion of JUDGE PIKE the report was received, and the committee instructed to go forward in their work, and preserve the reports among the archives of the Association.

GEN. VORIS: I would like to make a suggestion. It strikes me that there is eminent propriety in having that committee continue in the work without substantial change. I simply make the suggestion, so that when the committees are made up for the ensuing year, that that be taken into consideration. They have taken special interest in the work, and I would like to have them continued.

MR. WRIGHT: Mr. Chairman—I have a book in my hand which is of great interest to the Bar of Ohio. It is entitled, "Don't you Remember?" It is a little book with historic reminiscences, to one of which I desire to call the attention of this Association. It is a history of the Martha Washington trial.

Mr. Wright was called to order, but by unanimous consent was allowed to proceed. He went on to say that most of the actors in that famous trial were dead, referring in choice terms to the splendid genius of the gifted author, Miss Lida McCabe, and on behalf of her, presented the chairman, and through him, the Association, a copy of the book.

THE CHAIR: I was as much surprised as any of you could be, at the presentation of this book. Allow me to say, that the gentleman is correct, that almost everybody that took part in this most famous trial that then had occurred in Ohio, is dead, with the exception of Mr. George H. Pendleton and myself, and nearly all the members of the Bar who took any interest in that trial, are also dead. I need say nothing of the trial, nor shall I do so, except that I am very much obliged to the young lady.

On motion, a vote of thanks was returned to Miss McCabe.

The report of the Committee on Divorce was called for, Mr. Rufus King being Chairman.

JUDGE GILMORE: Mr. King has authorized me to speak for this Committee. I will say that we have had the subject under consideration. I can say further that we find it a most perplexing question; that we find it an embarrassing question. I can say further, that we have not been able to agree, as members of the Committee, on but one single proposition, and that we are about equally divided on every other that is proposed. We have communications from

members of the Committee, giving their views on the subject, as Mr. King was very anxious to have a satisfactory report on this subject. Those letters show the diversity of opinion among the members of the Committee. Mr. King writes me, he had intended to analyze the views expressed in these letters, and hoped to be present to-day to make a report in person. He sent me, on yesterday, a letter to say that by this morning he would have the analyzation made. We were at work last night on the subject. This morning I received a note from Mr. King, stating that he was unable to work on account of his own sickness; and in addition to that, his wife had taken sick, which utterly incapacitated him from performing the duty; and it is his request that this Committee have further time to report until the next meeting of the Bar Association.

Leave granted.

JUDGE GILMORE: Dr. Vouklein has prepared a paper on Medical Jurisprudence, as applied to the subject of divorce. If it would be in order, on the recommendation of my friend, Geo. W. Houk, of Dayton, who sent a letter to me by Dr. Vouklein, I move that the Doctor be requested to read his paper.

Objected to.

GEN. FINLEY: Without expressing any opinion about the merits of that motion, or without any discourtesy whatever to the Doctor or any other gentlemen, I make the point of order that the Committee, when called upon to report, asked leave for further time, which was granted. In connection with his report, he submitted a paper and asked consent—which means unanimous consent—that that paper, which belongs to his committee, may now be read. The gentleman on my left objected. Under the Parliamentiary rule, that paper goes over with the report of the Committee and cannot be read, nor can a motion

be entertained that it be read over a single objection. The reason of that is very plain. When a report comes before the House from a Committee, until that report is before the House no paper belonging to that report can come before the House. That is my point; not at all that I am objecting to hear the Doctor, but simply to make my point of order.

JUDGE GILMORE: I will withdraw my motion, and allow the matter to come up under miscellaneous business.

JUDGE JOHNSON: I have a resolution to introduce in regard to the Law Library. The books are fast being destroyed and cannot be well replaced. The oil leather binding is being dried out, and they are breaking to pieces; many of them requiring rebinding every year, and in addition to that there is no accommodation for any gentleman who wishes to go there. The same is true of the Clerk's office. Very valuable papers have accumulated for years with no place to store them. My motion simply is this, that a special committee of three from this body be appointed, charged with the duty of investigating this matter in the Law Library and the Clerk's office, and to take active measures to bring before the Legislature such recommendations as they may have in order that the Legislature may, at as early day as possible, take some action. No man who undertakes to work in that Library, crowded in there between books (and half a dozen lawyers fill all the tables up) but will acknowledge the truth of this. Last winter the court drew up a memorial and brought it into this Senate Chamber. It was brought to the attention of the Senate and referred to the Standing Committee on Library. I do not know whether the Standing Committee ever thought of it afterwards, and I have brought it to the notice of the Bar Association, in the hope that the Library can be made what it should be. The Clerk's office the

same. I hope something will be done at no very distant day towards it.

"*Resolved*, That a Special Committee of three be appointed, whose duty it shall be to examine into the condition of the books of the State Law Library, and need of rooms to keep said books, and for convenience in their use, and to take such steps as are necessary to invoke the action of the Legislature in the premises to the end that larger rooms and better accommodations for the use of the books may be provided; also that said committee be charged with further duty of like action in regard to the office of the Clerk of the Supreme Court.

Upon motion the resolution was adopted.

MR. SPENCE moved that a committee of ten, one from each district, be appointed to nominate officers for next year.

GEN. VORIS: Is not that made by the organization of this Association a part of the duty of the Executive Committee?

THE CHAIR: The Chair is advised that it is not so made. It has been done heretofore by a committee named by the Association itself. The Chair understands the previous usage to be one member from each of the Common Pleas Districts in the State.

The motion was carried.

COMMITTEE.

First District, Joseph Cox; Second, George Spence Third, J. J. Moore; Fourth, L. A. Russell; Fifth, E. F. Bingham; Sixth, A. K. Dunn; Seventh, O. F. Moore; Eighth, —— ——; Ninth, M. Stuart; Tenth, H. C. Carhart.

THE CHAIR: The Chair requests that this Committee on nomination be ready to report whom they wish on the Standing Committees, and the Chair will add that when

these Committees are thus designated, the Chair will appoint them, unless the Association objects, and these Committees are requested to meet and organize, by the election of Chairman and Secretary of each Committee, so that it may go into the annual report of this meeting.

MR. HARRISON: I offer the following resolution, and ask its reference to the Standing Committee on Legal Education:

"*Resolved*, That, in the judgment of this Association, applicants for admission to practice law in this State, should be required to study Sharswood's Legal Ethics, or some other work on that subject, and should be examined therein when they apply for admission to the Bar.

"*Resolved*, Further, that the Secretary be directed to deliver a copy of the foregoing resolution to the Chief Justice of the Supreme Court."

So referred.

Mr. Russell offered the following resolution;

"*Resolved*, That the special Committee, charged to report on the subject of divorce, be instructed to take into its consideration the observations on the subject of marriage and legal divorce, in the pastoral letter issued by the late Plenary Council of the Roman Catholic Bishops of the United States."

Adopted.

The Chair then appointed the following gentlemen on the Committee, under the resolution offered by Judge Johnson, which shall be known as the Committee on State Law Libray:

W. J. GILMORE,
R. A. HARRISON,
L. J. CRITCHFIELD.

The Secretary, on leave, read a paper from Judge Lang, of Tiffin, touching some of the incidents in the early life of

the late Chief Justice White, which, on motion, was referred to the Committee on Legal Biography.

On motion, the Association adjourned until 9 o'clock to-morrow morning.

MORNING SESSION.

WEDNESDAY, A. M.

Called to order at 9 o'clock.

THE CHAIR: I am advised by the Secretary that he now has the report of the Treasurer that was passed over. It will now be in order for the Secretary to read the report.

The report was read, and on motion, adopted.

The Ohio State Bar Association, in account with Telford Groesbeck, Treasurer:

Balance in hands of Treasurer, Dec. 26, 1883, .	$331 34

RECEIPTS.

From members, annual dues and admission fees,	$508 12
	$839 46

DISBURSEMENTS.

Dec., 26, 1883.—To the Ohio Law Publishing Co., for programmes, &c., .	$ 9 50
Jan'y 3, 1884.—To General C. H. Grosvenor,	97 47
" 21, 1884.—To. J. T. Holmes, Secretary,	200 00
Feb. 18, 1884.—To J. T. Holmes, Secretary,	250 00
March 7. 1884.—To J. T. Holmes, Secretary,	100 00
May 17, 1884.—To Robert Clarke & Co., for 350 postal cards and printing,	6 50
To J. T. Holmes, Secretary, admission fees and annual dues received by him, . . .	20 00
Postage stamps, ...	3 00
	$686 47

Leaving a balance in hands of Treasurer, . . . $152 99

$839 46

Respectfully submitted,

TELFORD GROESBECK,
Treasurer.

Mr. Harrison offered the following resolution:

"*Resolved*, That none of the debates of this Association should be published at the expense of the Association, excepting such as the President and Secretary shall deem of sufficient general and permanent importance to justify their publication."

On motion, the resolution was adopted.

THE CHAIR: The Chair would remind the gentlemen and the Association, that he is not quite sure which President and Secretary are referred to—the out-going or the in-coming.

MR. HARRISON: The President and Secretary who hear the debates, it seems to me, should determine.

It was agreed that the resolution be so amended to make it the duty of the President and Secretary who officiated at a meeting, to revise the report.

The Committee on Admissions made the following report:

The Committee on Admissions ask leave to make the following additional report, and recommend the following named attorneys as suitable persons to be admitted members of this Association, viz.:

17. Davis J. Cable, Lima; 18. W. E. Hackedorn, Lima; 19. G. L. Marble, Lima; 20. Wm. B. Sanders, Cleveland; 21. Smith Bennett, Bucyrus; 22. Andrew Stevenson, Mansfield; S. P. Wolcott, Ravenna.

H. C. CARHART,
N. B. BILLINGSLY,
W. C. G. KRAUSS,
Committee.

Adopted.

Judge Cox, of the Committee on Nominations, made the following report:

The committee for nominating officers, for the ensuring year, beg leave to report as follows:

FOR PRESIDENT,

Asa W. Jones, of Youngstown.

FOR VICE PRESIDENTS,

1st District, Aaron F. Perry; 2d District, James M. Smith; 3d District, T. J. Godfrey; 4th District, S. E. Williamson; 5th District, E. F. Bingham; 6th District, Chas. Follett; 7th District, Wells A. Hutchins; 8th District, D. A. Hollingsworth; 9th District, M. Stuart; 10th District, John McCauley.

FOR SECRETARY.

The committee, recognizing the past diligence and efficiency of the present Secretary, Col. J. T. HOLMES, would unanimously recommend him for nomination, and request that he accept the same.

FOR TREASURER.

Telford Grosbeck, of Cincinnati.

Respectfully submitted.

JOSEPH COX,
Chairman of Committee.

Adopted.

On the call of Districts, the following standing committees were named and confirmed:

EXECUTIVE.

C. H. Grosvenor, *Chairman.*
J. T. Holmes, *Secretary.*
1st District—John W. Herron, Cincinnati.
2d " R. D. Marshall, Dayton.
3d " Henry Newbegin, Defiance.
4th " John H. Doyle, Toledo.

5th District—P. C. Smith, Circleville.
6th " C. H. McElroy, Delaware.
7th " C. H. Grosvenor, Athens.
8th " A. W. Train, Zanesville.
9th " Rush Taggart, Salem.
10th " Gen. E. B. Finley, Bucyrus.

ADMISSIONS.

A. W. Jones, J. T. Holmes, } *Ex-officio.*

1st District—W. A. Davidson, Cincinnati.
2d " T. J. Pringle, Springfield.
3d " C. A. Layton, Wapakoneta.
4th " A. T. Brewer, Cleveland.
5th " C. A. White, Georgetown.
6th " J. C. Devin, Mt. Vernon.
7th " A. W. Vorhes, Pomeroy.
8th " R. G. Richards, Steubenville.
9th " R. W. Taylor, East Liverpool.
10th " H. C. Carhart, Galion.

JUDICIAL ADMINISTRATION AND LEGAL REFORM.

H. Elliott, *Chairman.*
T. A. Minshall, *Secretary.*

1st District—Lawrence Maxwell, Cincinnati.
2d " H. Elliott, Dayton.
3d " Isaiah Pillars, Lima.
4th " E. P. Green, Akron.
5th " T. A. Minshall, Chillicothe.
6th " A. K. Dunn, Mt. Gilead.
7th " O. F. Moore, Portsmouth.
8th " M. M. Granger, Zanesville.
9th " W. A. Lynch, Canton.
10th " H. T. Van Fleet, Marion.

LEGAL EDUCATION.

1st District—Judson Harmon, Cincinnati.
2d " M. B. Earnhart, Troy.
3d " John E. Richie, Lima.
4th " R. P. Ranney, Cleveland.
5th " James E. Wright, Columbus.
6th " A. R. McIntire, Mt. Vernon.
7th " W. B. Loomis, Marietta.
8th " H. T. Stockwell, New Philadelphia.
9th " G. F. Arrel, Youngstown.
10th " R. W. Johnson, Galion.

GRIEVANCES.

Geo. Lincoln, *Chairman.*
J. L. Cameron, *Secretary.*
1st District—John J. Glidden, Cincinnati.
2d " Wm. M. Rockel, Springfield.
3d " J. L. H. Long, Ottawa.
4th " L. A. Russell, Cleveland.
5th " George Lincoln, London.
6th " S. M. Hunter, Newark.
7th " A. D. Follett, Marietta.
8th " T. W. Emerson, Barnesville.
9th " L. W. King, Youngstown.
10th " J. L. Cameron, Marysville.

LEGAL BIOGRAPHY.

J. E. Ingersoll, *Chairman.*
_____ *Secretary.*
1st District—M. F. Force, Cincinnati.
2d " E. H. Munger, Ottawa.
3d " S. N. Owen, Bryan.
4th " J. E. Ingersoll, Cleveland.
5th " W. H. Safford, Chillicothe.
6th " H. M. Carper, Delaware.
7th " J. W. Bannon, Portsmouth.

8th District—J. H. Miller, Steubenville.
9th " R. B. Murray, Youngstown.
10th " S. R. Harris, Bucyrus.

SPECIAL COMMITTEE ON DIVORCE.

Rufus King, *Chairman.*
_____ *Secretary.*

1st District—Rufus King, Cincinnati.
2d " John Little, Xenia.
3d " James L. Townsend, Lima.
4th " S. E. Williamson, Cleveland.
5th " W. J. Gilmore, Columbus.
6th " D. Dirlam, Mansfield.
7th " W. H. Lasley, Pomeroy.
8th " D. A. Hollingsworth, Cadiz.
9th " N. B. Billingsley, New Lisbon.
10th " Frank A. Baldwin, Bowling Green.

MR. NEWBEGIN offered the following resolution and asked that it be referred to the Executive Committee;

"*Resolved*, That the 6th article of the Constitution be amended by substituting the word "Circuit" for "District."

Ordered referred.

JUDGE ELLIOTT of the committee on Judicial Administration and Legal Reform submitted the following report:

GENTLEMEN OF THE STATE BAR ASSOCIATION:

Your committee on Judicial Administration and Legal Reform beg leave to submit the following report:

At the last meeting of this Association certain action was had with reference to the Supreme Court and Circuit Court.

I.

It was proposed, in order to avoid any misconception as to the term of service of the judges of the Supreme Court,

that the Legislature be requested to pass an act, which should have the effect of putting at rest that matter. The proposition, in substance, was, that the judges then in office and those recently elected, should serve the terms for which they were respectively elected, and that their successors, respectively, should be elected for the term of five years from the expiration of the terms of the present judges.

II.

It was next determined as the judgment of the Association, that the *Circuit Courts* to be organized under the provisions of the recent Amendments of the Constitution, ought to be constituted substantially as follows:

(1) That each circuit should be composed of three judges, and that two terms of that court should be held in each county each year;

(2) That the State should be devided into *seven* or more circuits;

(3) That the Circuit Courts should have the same appellate jurisdiction as District Courts now have, except that no appeals should be allowed in Will cases;

(4) That the Circuit Judges should be elected at the ensuing October election and take office on the 9th of February, following;

(5) That the term of service should be six years and the salary $4,000;

(6) That three judges in each circuit should be elected at the first election, one of whom should serve for two years, one for four years, and one for six years, to be determined after the election by lot, and thereafter their successors should be elected for the term of six years. It was then resolved that the Committee on Judicial Administration and Legal Reform be directed to prepare and submit to the General Assembly for its action at the coming session, bills for carrying into effect the action and

recommendation of the Bar Association with reference to the Supreme and Circuit Courts; and that the committee use its influence to promote the passage of such bills.

The work of the Committee has passed into history, as will appear from the Statutes of the State and the Journals of the two Houses. We congratulate the Association upon the fact that the recommendations of the Committee, which were in strict accordance with the action of the Association at the last meeting, have been substantially endorsed by the General Assembly.

After two efforts a quorum of the Committee was brought together in this city about the first of February. Three members of the Committee, Messrs. Maxwell, Moore and Lanbie, were unfortunately detained by business engâgements, and could not attend the meeting. Valuable assistance was rendered to the Committee by our late President, Hon. R. A. Harrison, Judge Bingham and Hon. L. A. Russell. After much investigation, thought and labor, the Committee agreed upon and prepared *three* bills, intended to carry out the reccommendation of the Association. By the courtesy of the Judiciary Committee of the two Houses, this Committee was accorded two hearings, with opportunity to present and explain the provisions of its bills, and was heartily thanked for its work in that behalf. Much credit is due Senator Godfrey and Representative Bargar, respectively, Chairmen of the Senate and House Judiciary Committees, and, in fact, to all the members of those Committees, for the great interest which they took in the matter of perfecting and pressing to passage the bills. To the intelligent and energetic work of those Legislators the Bar is largely indebted for what has been accomplished toward organizing the Circuit Courts.

1. The *first* bill prepared by this Committe was intended to settle the controversy, which, in some minds, had arisen in regard to the *terms* of the Judges of the Supreme Court,

and as perfected and passed into a law, will be found in Session Laws, Vol. 81, p. 126.

2. The *second* bill provided for the "organization of the Circuit Courts," and for adapting "existing legislation thereto," and which, as perfected and passed into a law, will be found in Session Laws, Vol. 81, p. 168.

Following the recommendations of this Association, your Committee, in the preparation of this bill, left the first section blank, not deeming it wise to fix the *number* of judicial circuits, or to attempt to arrange the details of circuits. These matters were left entirely to the Legislature, with only the suggestions of the Bar Association. In fixing the number of circuits at *seven*, the General Assembly acted in substantial accord with the action of the Association. No doubt experience will show mistakes in districting the State, whereby the courts in some of the circuits will be over-crowded with business. These difficulties may be remedied in the future. The wisdom of some of the provisions of this law has been seriously questioned by a portion of the Bar. This is as might reasonably have been expected. Time and experience will, doubtless, point out many defects and errors, and at the same time suggest the remedy. The objection, which occurs as of most substance, relates to the second section, (4476) which provides that the Circuit Court shall be held by *three* judges, a majority of whom, competent to sit, shall be necessary to render a decision, or enter a judgment or decree. It is gravely suggested that, in case of the *absence* or disqualification of one of the judges, the other *two* ought to be authorized to hold the court. It is submitted that this is a matter of much importance, and demands very serious consideration. Any change in the law by which *two judges* may, as a matter of right, hold the Circuit Court, and dispose of all questions of law and fact before them, important and unimportant alike, is open to grave objections, and will, we fear, be

regarded with feelings of dissatisfaction by both the Bar and the laity.

May it not occur, if one judge may be dispensed with, that in time *absence* will become the *rule* and not the *exception*, and in this way our long hoped-for Circuit Court come to be a court held by *two* judges only?

It is hoped that absence, on account of sickness, will not occur so frequently as to seriously impede the business of the courts; and as to the matter of disqualification on the ground of interest or otherwise, that is amply provided for in the law calling for the transfer of and exchange between judges.

In view of the difficulties surrounding these questions, the Committee recommend that no change be made in the law until time and experience shall dictate what those changes ought to be.

It is suggested that the law requiring *two* terms of the Circuit Court in each county, in each year, might be so changed as to require but *one term* in certain counties, with authority in the court to reserve and hear cases in one or more counties in the circuit where access could be had to well supplied law libraries.

As in the former matters, this committee recommends that no change in this regard be made until the courts shall be fully organized, and when, after experiment, it may be shown what changes are demanded.

The *third* of the bills prepared was to confer appellate and other jurisdiction on the Circuit Courts. This bill amends and supplies sections 5225, 5226, 5227, 5235, 5239, 5573, 6709 and 6710; and repeals sections 455 and 5865 of the Revised Statutes. See House Bill No. 247. This bill, as perfected by the House Judiciary Committee, passed that body at the last days of the session, and on coming into the Senate was referred to the Judiciary Committee, which, for want of time, did not report,

but referred the bill to a select number of said Committee for consideration during vacation. This sub-committee is now considering the whole matter, and, as we are informed, is making progress in perfecting and codifying the laws with reference to the Circuit Courts. We are assured that a report will be ready by the meeting of the Legislature, and that the bill will be pushed to its passage. Your committee need not call the attention of the Association to the special provisions of this bill, as members may examine it for themselves.

Following the recommendations of the Association, the appellate and other jurisdiction of the Circuit Courts is made substantially the same as that heretofore conferred upon the District Courts. Among the most important changes effected is the repeal of section 5865 of the Revised Statutes, which granted the right of appeal in Will Cases.

Another important change is effected in section 5235 of the Revised Statutes in regard to appeals. The new, or proposed section, provides that "when the appeal is allowed, and bond given, the judgment is thereby suspended, unless some part of the final judgment appealed from be an *injunction*, in which case such injunction shall not be *suspended*, except by order of the Circuit Court, or two judges thereof, upon reasonable notice to the adverse party."

Another important change is effected in the restoration of section 6710 of the Revised Statutes to its former status. As amended, the section allows a petition in error to be filed on leave of the Supreme Court to reverse a final judgment of the Circuit Court, whether that judgment be one of affirmance or reversal. If the reversal be upon the ground that the judgment in the Common Pleas is not sustained by the evidence, then error in such case would not lie to the Supreme Court.

III.

At the last meeting of this Association, certain resolutions were referred to this Committee.

1. The first resolution, by Mr. Newbegin, was to the effect that the "Code of Civil Procedure be so amended "as to require *trial Judges* to direct the jury to return a "verdict for either party to the issue on trial, when the "law or the evidence is such that if a verdict were returned "against such party a new trial ought to be granted."

The Committee is of the opinion that the proposition contained in this resolution should not be incorporated into the Code of Civil Procedure. It is of doubtful propriety and of doubtful constitutionality as an interference with, and a practical denial of, the right of trial by jury. The most that could be done, would be to authorize the trial judge to withdraw such a case from the jury and enter a non-suit. Upon this latter matter, the Committee is not agreed, and hereby express no opinion.

2. The second resolution referred to us, also by Mr. Newbegin, is to the effect that "Judges of the Supreme "Court of the State, upon retirement from the Bench, "after ten years service thereon, should be paid by the "State *one-half* the salary of such judge each year during "the remainder of his life, and that the General Assembly "be requested to enact a law to that effect."

The Committee, upon consideration, do not deem that such legislation at this time, would be wise, and therefore report adversely thereon. We can better express our views on this question by referring to the *third* resolution referred to this Committee, prepared by Judge Gilmore.

3. This resolution provides that the "Supreme Court "shall consist of *seven* judges, whose terms shall be seven "years, one of whom shall be elected annually, on the "second Tuesday of October, ... and the com- "pensation of the judges of said court shall be $5,000."

The Committee are of opinion that the *number* of judges of the Supreme Court ought not to be increased at this time. We think it would be advisable to take no action in the premises until the Circuit Court shall be fully organized, and the necessities of the Supreme Court more fully made manifest. It is furthermore the unanimous opinion of this Committee, that when necessity shall require the increase of the number of Judges of the Supreme Court, that said court should be composed of *ten judges*, whose terms shall be ten years, and that the court may be divided into *two sections*, as provided in the recent amended Judiciary Article of the Constitution.

The Committee is of opinion that, in order to secure the best talent on the Supreme Bench, the salaries of the judges of that august tribunal should be as proposed by Judge Gilmore's resolution, at least $5,000; and we recommend that the General Assembly be requested to so amend the law.

Respectfully submitted by the Committee,

H. ELLIOTT,
THAD. A. MINSHALL.
A. C. VORIS,
DAVID I. BROWN,
H. T. VAN FLEET,
A. K. DUNN.

Motion was made to adopt the report.

JUDGE ELLIOTT: Judge Minshall, a member of the Committee on behalf of himself, and possibly others, has a proposition to make in regard to Section 6710, differing from the report of the Committee; he asks that it may be read.

JUDGE MINSHALL: This is not concurred in by the majority of the Committee, but is by a portion of the Committee.

Resolved, That in view of the creation and institution of the Circuit Court the appellate jurisdiction of the Supreme Court, should be limited, by amending Section 6710 so as to read as follows:

A judgment rendered, or final order made by the Circuit Court, reversing a judgment, or final order of the Court of Common Pleas, may be reversed, vacated or modified by the Supreme Court on petition in error commenced in said Court, for error appearing on the record. But in all cases where the Circuit Court affirms a judgment or final order of the Court of Common Pleas, such judgment of affirmance shall be final between the parties, except when the decision involves the construction of the Constituton of the U.S., or of an Act of Congress, or of the Constitution of the State, or of an Act of the General Assembly, or any of its provisions; or where the Circuit Court is of the opinion that the decision involves a question of law that should be determined by the Supreme Court, and such opinion is entered upon the record, in which excepted cases judgment of affirmance by the Circuit Court of the judgment and final order of the Court of Common Pleas, may be reversed, vacated, or modified by the Supreme Court, as in the case of judgment of reversal of the Common Pleas by the Circuit Court; but the Supreme Court shall not, in any civil case or proceeding, except where its jurisdiction is original, be required to determine as to the weight of evidence.

MR. STUART: Does that minority report refer to affirmation by all, or a majority of them only?

JUDGE MINSHALL: Whatever the judgment of the court is, whether by a majority or by the court as an entirety.

MR. STUART: That is, if a majority should affirm, your proposition is that it should be a finality?

JUDGE MINSHALL: In all cases where there is a reversal, either party can institute proceedings in error to the Supreme Court. Where a cause does not fall within one of the exceptions, it is to be a finality between the parties. That is done with a view of relieving the Supreme Court

of a large amount of business coming through it. It is believed that the creation of the Circuit Court originated in the generally conceded necessity that something should be done to relieve the Supreme Court.

MR. WRIGHT: It seems to me that without this bill before the Association, there is a good deal of trouble. I want to vote understandingly on this report. It seems a very fair, a very intelligent report, a lawyer-like paper. But there is one trouble about it, and the trouble is exactly as was experienced by the Roman people about the laws of the twelve tables. They were hung so high, the people could not read them, and then they were punished because they violated them. I do not know what this bill is. My mind is not sufficiently comprehensive to take in all the modifications of the Revised Statutes. I think every member of this association feels a deep interest in the construction of the jurisdiction of this court, but it seems to me that before we are asked to pass upon this report, to approve or reject it, we ought to be put in possession, if it be possible, of copies of this bill, that we may see whether the provisions are such as will meet our judgment. I understand there is a copy or two in possession of the brethren, but I have been unable myself to get hold of it, but I think, if possible, before we proceed to act on this report, every member ought to be put in possession of a copy, or the bill read *in extenso* by the Secretary.

A VOICE: Do you refer to the majority report?

MR. WRIGHT: I am speaking of the majority report. There are some features of the minority report I approve, and there are some features of the majority report, as near as I understand them, of which I disapprove, but I am unable to come to a complete understanding of the subject until I see this bill. This talk about relieving the

Supreme Court is a mistake. If the Supreme Court has one hundred and fifty cases or three hundred cases in the year, they have a sworn duty to perform, and perform it intelligently, and I know that they do it intelligently as well as I know anything, and I know they work laboriously. If the people of the State will furnish machinery which overcrowds that Court, it is not the fault of the Court; they are human beings; they can only work so many hours a day, so many days in the year. If it be possible in any way to so modify this machinery as to secure a reduction, I am in favor of it as much as any lawyer in the State. I think just as my friend, Judge Minshall, if I understand what he means. Where parties have a fair trial upon the facts in the Common Pleas, when that judgment is affirmed in the Circuit Court with certain limitations that ought to be imposed, that ought to be an end to litigation; but I believe it is arrant nonsense to say that when you come to the Circuit Court and they reverse a judgment, you have got to go down again to the lower court, and perhaps break up your client, and so on *ad infinitum*, in order to reach the court of last resort, so that these errors may be corrected. I say it is to my mind a serious objection when the court is reversed by the Circuit Court, that it ought to be reviewed, and I am in favor of having that part of it changed and disapproved entirely. I say the true rule is the rule which has been adopted by the Supreme Court of the United States, and that is when a court becomes perfectly satisfied that they will be obliged to set aside a verdict, it is an outrage upon the rights of litigants to compel them to go to a jury.

JUDGE MINSHALL: In all cases where the judgment of the Court of Common Pleas is reversed by the Circuit Court, the defeated party can, without any limitation whatever, prosecute proceedings in error to the Supreme Court.

MR. WRIGHT: That is right that meets my judgment.

But you are obliged to go back to the Common Pleas to have a new trial. The result of it is, by the time you get it to the Supreme Court, if the lawyers are not all broken up, their clients are, and the people become thoroughly disgusted. When an error happens in a cause it ought to be corrected by the Court of dernier resort, and I ought not to be required to go through this nonsense, to go up again before I can reach the court of last resort. That is one of the objections I have and this I approve in the minority report.

JUDGE ELLIOTT: I have to correct a misapprehension. The report of the Committee and the bill proposed is not as my friend suggests, but it is that you may go on petition in error from the Circuit Court to the Supreme Court, whether the judgment of the Circuit Court be one of affirmance or reversal. If I understand what he desires, the gentleman did not understand the reading of the report. It only provides that where a reversal is on the grounds that the judgment is against the evidence, that they cannot go to the Supreme Court, but must go back to the Common Pleas.

MR. WRIGHT: I would like to hear this bill as it is now proposed, read from the desk by the Secretary; and then I would like to hear in connection the report of the minority of the Committee, as I understand that is the form of the statute for adoption. I want to vote understandingly, Mr. Chairman.

THE CHAIR: The gentleman calls for the reading of the report. If there be no objection interposed by anybody, I shall ask the Secretary to read it.

MR. WRIGHT: I want to make a suggestion, I only want that part of the bill that relates to these matters here on trial.

JUDGE ELLIOTT: We supposed that members of the Bar generally had seen copies of the bill—both the bills that passed, and the one that passed the House and did not pass the Senate, and is now pending. It is proper to say, as was said in the report, that the special committee of the Senate Judiciary Committee is considering the bill codifying the law relating to District Courts. However, that bill, so far as this matter of appeals and error is concerned, does not affect the principles contained in this bill. There are no changes apparent from the jurisdiction of the District Court proposition in this bill, except such as attention was called to in the report. I have a copy of the bill here that is now before the Senate. The Secretary can read it, or any sections can be read. If you will allow me, I will call attention to the different matters referred to.

The first is a change as to the effect of appeals in injunction cases. You remember that under the old law, and the law as it now stands, you come into the Court of Common Pleas and you ask relief. The principal ground of relief, or some part of it, may be an injunction. You frequently try your case, introduce your testimony, argue the law and the facts to the court, and the court, after deliberate consideration and full investigation, grants you a perpetual injunction. Your opponent, who has only stood on the defensive, puts in an appeal, and that ends your injunction, unless you can hunt up the District or Circuit Court judges and have your injunction renewed. Now, we thought that in such a case the labor ought to be put upon the defendant, and that when the plaintiff, by his labor and investigation, had secured a perpetual injunction, upon appeal being taken, such injunction should not be abrogated unless upon the order of the Circuit Court, or two judges thereof. That is the first change of any consequence.

The next is in regard to these error matters. You remember that the law formerly stood, Section 6,710, so that you

could come to the Supreme Court on petition in error from a judgment of affirmance of the District Court. It very often occurs in proceedings, that the sole ground for reversal is upon a question of law. The Legislature so changed the law as it stands now, that you cannot go to the Supreme Court from a judgment of affirmance, but you must go back to the Court of Common Pleas and go through the labor and expense of trying your case over again; and, perhaps, again and again, before you can get to the Supreme Court to have that question of law settled. Now, we propose to restore the law as it formerly was, so that if the reversal is on the ground of a question of law, you ought to be permitted to go to the Supreme Court and have that question of law settled, as, perhaps, settling that question will settle your case; and we so changed it. Aside from those matters, and the repeal of the section allowing appeals in will cases, we made no other change in the law as it now exists, and I do not believe the reading of the bill would give any more information than that.

MR. WRIGHT: I understood in this bill was incorporated a provision like this; That it requires a reviewing court to pass upon all errors which are made in a cause. Is that so?

JUDGE ELLIOTT: There is in the bill nothing of the kind. I understand, indeed I know, such a change was proposed in the bill that the Senate Judiciary Committee are considering—that is their own bill. They proposed something of that kind, and in an interview of this Committee with that committee, night before last, I think the unanimous advice of the Committee of the Bar Association was adverse to such a change.

MR. WRIGHT: Should such kind of nonsense as that be forced upon the Court, I think every member will vote no. I am glad to hear that is not in the bill. I am glad to hear we are not bound by anything of that kind.

MR. NEWBEGIN: I wanted to say a word, and I might just as well say it here as any time. Do I understand, however, that the minority report is before the House for consideration?

THE CHAIR: As I understand the technical parliamentary law it is not, except by general consent; but I understood this Association to give general consent that it should go with the report, and be considered at the same time, and therefore rule that it is before the Association.

Mr. NEWBEGIN: I have a word or two to say in connection with the resolution I offered last year, which the Chairman of the Majority Committee has reported upon adversely. That resolution is this;

"*Resolved, by this Association*; That the Code of Civil Procedure be so amended as to require trial judges to direct the jury to return a verdict for either party to the issue on trial, where the law or the evidence is such that, if a verdict were returned against such party, a new trial ought to be granted."

It seems to me that the Chairman of the Judiciary Committee and the committee itself, have fallen into a grave error in regard to the statement that this resolution, if adopted, would be in contravention of the Constitution.

I think I see what has been moving in their minds, when I say that they seem to have the idea that this would not be a trial to the jury. Why, it is the very common practice now in Ohio, upon request, to charge that the jury return a verdict either way, and if there is no evidence tending to prove the case, the Court must so charge. Now, in a case which I had and which has been passed upon, both by the District Court and the Supreme Court of this state since this resolution was introduced, I asked the Common Pleas Court to charge as I have stated, and the court made the charge and ordered peremtorily a verdict for the defendant, and the jury so returned it. The plaintiff took that case to

our Dictrict Court and last spring the District Court reversed the Common Pleas, and ordered it back for trial, because, they said, there was testimony tending to support the verdict in the record. From that I prepared a motion and a petition to the Supreme Court and filed the motion under leave. Now, the Supreme Court sent me back under the statute to the Common Pleas, because I had had a trial on the merits. Now, does our venerable Chairman of the Committee say there is no trial on the merits? Under the statute I say, although two Judges of the Supreme Court said I ought to be let in on other points—told me so—that a proper construction of that statute, as they were bound to consider it, sent me back to the Common Pleas Court.

Why, what is a judge for? Mr. President and my brethren, what in the name of common sense is that judge for, except to direct the jury as to the law and the evidence? I do not know any other reason on earth that he should preside at a trial except that. And that simply embodies the law in the United States as to practice in all our courts and by the Supreme Court. It is the identical Code of Iowa; it is the law of Massachusetts, Michigan, Wisconsin, the law of two-thirds of these States to-day. Why is a judge sitting, when he must grant a new trial under the law and evidence to fool away his time that a jury may sit in a panel and listen to the tom-foolery of the bar three or four days.

I say it is the law of Ohio to-day just as it is there, and I am simply embodying it in a rule of law to stiffen up the back-bone of our Common Pleas judges and for no other purpose. When we have to be sent back, as we have now in Ohio, according to my friend Wright's statement. Now, after having got a verdict under the direction of a judge and that is reversed, without an opportuniiy to go to the Supreme Court, the law ought to fix some rule that here-

after we may know how we are trying cases, and that is the only object in this resolution. So that, I ask now, that this be referred back to the Judiciary Committee proposed for next year for further consideration.

JUDGE MINSHALL: In our reference to this particular resolution in the report that has just been made, we are of the opinion that it is not the law of Ohio to-day; and we are further of the opinion that it never was the law of Ohio, nor was it ever the rule of the common law.

MR. NEWBEGIN: I said it was the law of Ohio to-day that when there was no testimony tending to sustain the issue, that then the court must charge—

JUDGE MINSHALL: I agree with you there that it is the old practice of the non-suit. You will note the difference between the practice of a non-suit and the proposed practice contained in this resolution. Under the practice of non-suit, and that power exists to-day—courts have that power to-day in Ohio—When there is no evidence tending to support all of the affirmative averments that enter into the issue brought by the parties, or where there is no evidence tending to support one of the material averments that enter into the issue, the court may wrest the case from the jury and dismiss the action, but that is not the proposition contained here. The proposition is simply this: When there is evidence offered in favor of the affirmative of the issue, although there may be evidence tending to support the entire issue on the subject, if the weight of the evidence is of such character that the judge is of the opinion, that it would not support a motion for a new trial, he shall not direct a non-suit, but shall direct the jury to find a verdict for either party. The judge is in no instance to direct the jury to find a verdict for either party. He can do just what I have stated, on a motion for a non-suit.

Such a proposition as this would not be valid now by the Constitution of the State to-day. Trial by jury is guaranteed to be inviolate; it shall be unimpaired, and is guaranteed by the Constitution. This proposition takes away the right of trial by jury from the parties in every case when the Constitution provides that they are entitled to it when the judge is of opinion the evidence offered by the party who has the affirmative is of such character as I have indicated. In other words, he is to substitute his own opinion for the verdict of the jury in the first instance. The policy of our laws is to trust juries to some extent, and under proper instructions from the judge they will give the proper verdict. If they commit an error, and it is so clearly so, as to justify it, then the court has power to set aside that verdict and grant a new trial. The difference is very material. In one case the party needs a new trial; in the other, he does not.

MR. HARRISON: I concur entirely in the views just expressed by Judge Minshall, but probably the Association is considering a matter of form merely, whereas there is here a matter of substance, which, in my judgment, is worthy of the attention of the Committee on Judicial Reform; and I hope that this resolution will be referred back to them, so that they may consider the question, which is the substantial question, and that is this: whether the rule which was early established in Ohio, that a motion for a non-suit will not be granted, if there be any evidence tending to prove the case of the plaintiff, shall stand, or whether the rule shall be adopted, that if the evidence offered in support of the affirmative of the issue, is so slight as that the court would set aside the verdict, if one were found in favor of the plaiutiff, then the court should grant a motion for a non-suit. The Ohio rule was formerly the rule in England. It was formerly the rule in most of the United States, but in England they have changed the rule. The

Supreme Court of the United states have adopted the present English rule. Most of the States of the Union have adopted the rule that when the evidence is such as that the court would be compelled to grant a new trial, if a jury should find in favor of the plaintiff, a motion for a non-suit ought to be granted, because it is spending time to no purpose to compel the defendant to introduce his testimony to have the questions of fact argued to the jury, and the jury instructed in regard to the law of the case, when, after all this is done, all this time is spent and labor is spent, the court will be compelled to grant a new trial, and set aside the verdict. But to render judgment for the defendant, Judge Minshall's point is well taken. There is a vast difference, so far as the rights of the party are concerned, between granting a motion for a non-suit and directing the jury to find against the party holding the affirmative, and in favor of the other party. In the latter case, judgment would be reached *non abstante veredicto.* In the former case, plaintiff can again bring a new action when he can supply the proof that he was not prepared to present on the first trial of the case. It merely puts an end to that suit, and cannot be pleaded.

MR. NEWBEGIN: Both Judge Minshall and Mr. Harrison have misunderstood the import and purport of my resolution. It is not a mere non-suit. It is a direction upon request of either party after all the testimony is in, not after the plaintiff's testimony is in, nor of the party having the burden of the issue, merely, upon all the law and evidence. That is my resolution plainly and simply. Now why in the name of common sense should it not be so, when, if the evidence is such that on the whole evidence, there is no case, it is simply and only a question of law for the court so to charge the jury? That is all that is meant by the proposition. It is a question that is brought in the United States Court every day to argue,

and every time to take up on the whole evidence to the Supreme Court. No question comes up upon all the law and evidence by both sides, and why should the plaintiff go back and have a new trial? If he has such a fool of an attorney, whom he has to hire and pay for and not to prepare his case, he ought to abide by the result.

MR. WRIGHT: I believe that in the English rule, and in the rule adopted by the United States Court, that after a case has so far proceeded and is ready to be submitted to the jury, if the court is of the opinion that he would be obliged to set the verdict aside, if a verdict were returned, then a non-suit should be taken. Of course, as Brother Harrison suggests, that gives him the benefit of a second trial it he wants it.

MR. NEWBEGIN moved to refer that part of his resolution back to the Committee on Judicial Reform.

JUDGE ELLIOTT: As an individual member of the committee I certainly should not object. I am in favor of carrying out the principles of that resolution in a different form than that suggested in the report of the committee, and that is in such a case, when the evidence is all in and the judge is satisfied, that if a verdict were returned against the principal party, he would have to set it aside. Then he might on motion withdraw the evidence from the jury and render judgment, or something of that kind.

MR. NEWBEGIN: I will ask you to read that part of it. That escaped my attention.

JUDGE ELLIOTT: We didn't recommend; we simply said that was as much as could be done.

The relief asked for there was of doubtful propriety and doubtful constitutionality as interfering with the right of trial by jury. The most that could be done would be to

ask the trial judge to withdraw such a case from the jury and enter a non-suit, but we further add "upon this latter matter the Committee is not agreed and hereby expresses no opinion."

MR. NEWBEGIN moved to strike out the words "or the evidence" in his resolution, to be referred to the Committee on Judicial Reform.

Lost.

MR. RICHIE: In order that the matter may be passed upon, I now move that the minority report be substituted for the majority report as to the matters contained in the minority report.

MR. HARRISON: This is a very important matter, and I, therefore ask, that the Secretary read the proposition contained in the minority report.

MR. RICHIE: I would like to have the Secretary read as well that portion of the majority report for which the minority report is offered as a substitute.

JUDGE MINSHALL: I wish to say that the minority report does not conflict subtantially with the majority report. It is more properly an addition to the majority report, not concurred in by the majority of the committee. It does not conflict with any portion of the report of the majority. In other words, the matter contained in the report of the minority, is not treated of at all in the report of the majority.

MR. RICHIE; Then, as I understand, it is a supplement to the majority report.

THE CHAIR; The Chair rules, if the statement of Judge Minshall be true, the gentleman's motion is not in order, to substitute.

MR. RICHIE; I will substitute the word supplement for substitute.

THE CHAIR: The motion then is that the original majority report be supplemented by the minority report, as to the matter contained in the minority report.

JUDGE ELLIOTT: The whole matter will be manifest by reading section 6710 as contained in the majority report. Now, Judge Minshall's is not simply a supplementary report, but takes the place of 6710 of the bill to confer jurisdiction upon the Circuit Court. The section, as it now reads, is, "A judgment rendered, or final order, made by the Circuit Court, may be reversed or modified by the Supreme Court on petition in error." Now, Judge Minshall's simply takes the place of that, and says the same thing, but makes some additional provisions.

THE CHAIR: The Chair then rules that the original motion is in order.

MR. RICHIE: Will the Chair please direct that the minority report be read in connection with this.

So ordered.

MR. RICHIE: Mr. President, my original motion is based on my recollection of this minority report. My modification of my original motion was based upon the understanding of the gentlemen who presented the minority report.

MR. HARRISON: This is a proposition that is as novel as it is important. At any rate, it is novel to me, and I presume it is to most of the brethren present. I say, it is important, because, in my judgment, if the proposition be enacted into law, fully one-half of the cases which would otherwise be taken to the Supreme Court from the Circuit Court, will have the final quietus put upon them in the Circuit Court. I think that the records of the District Court, if they were searched, would show that, in a consid-

erable majority of causes, taken upon error from the Common Pleas to the District Courts, judgments of the courts below have been affirmed. I know that so far as the judgments of the District Courts are concerned, which have come under review in the Supreme Court, the large majority of the judgments of the District Courts have been affirmed by the Supreme Court.

In fact, some years ago, when I made an examination of several volumes of the Ohio State Reports, I was surprised to find what a large proportion of the judgments of the District Courts were affirmed by the Supreme Court. And I was somewhat more surprised at the fact, that, comparing the number of judgments of the District Courts of the State, which were taken to the Supreme Court for review, with the number of judgments taken from the Superior Court of Cincinnati directly to the Supreme Court for review, the balance was largely in favor of the District Courts of the State. Now, this is a radical proposition. If we knew, Mr. President, exactly the stuff of which the Circuit Courts will be composed, as they shall show their action and performance upon the bench, I confess that I could vote with a great deal more intelligence and freedom upon this proposition than I feel able to vote now. I do not mean by that, that I am not aware of the fact, that, some very able and learned lawyers have been selected as judges of the Circuit Court, and some judges who have rendered eminent services on the bench of Common Pleas have been elected as judges of the Circuit Court. Still, in other Circuit Courts, lawyers have been chosen to the bench who have had no judicial experience. It is hoped and trusted and believed by the bar that the Circuit Court will prove to be all that those who have favored its creation have expected it to be; still, if we had a year's experience with the Circuit Court; if, during the year that is to come after February, it should be shown that they have

time enough in the several circuits to bestow on the causes that come before them that deliberation and examination which is requisite for a satisfactory and intelligent disposition of them, then, doubtless, many of us would feel free to vote for this proposition; but, if experience should show that they have not the time to give such consideration to the causes before them as that their judgment ought to be final, so that, that is the court of last resort affirming the Common Pleas, then, if this proposition were enacted into law, we should feel that a grievous wrong had been done parties litigant.

There is force in the position of Judge Minshall, that, where the Court of Common Pleas has heard the cause and rendered judgment, and the cause is then removed to the Circuit Court on error, and that court concur with the Court of Common Pleas, that ought to end the contest in the courts, between parties. Probably the interest of the parties require it as well as the interest of the public. The public policy may require it because the public are largely interested in bringing to a final termination litigation between the citizens of the State. There is much force, I say, in that proposition. Still, it frequently does happen that a judgment is affirmed when there is manifest error in the record, and when it may be made to appear for the first time before the Supreme Judicial Tribunal. At the same time if the Circuit Court is composed of judges, such as we believe them to be, and if the Circuit Court of the State shall have time enough to give full consideration to all the cases that come before them, it may be—I am inclined to think it will be—expedient and wise to stop further litigation between the parties, if the Circuit Court shall unanimously affirm the Court of Common Pleas. I do not think the proposition of Judge Minshall provides for that.

Surely, if there was a difference of opinion among the

judges of the Circuit Court; if one of them should doubt as to the correctness of the Court of Common Pleas, or possibly—I am putting this now hypothetically—perhaps, if one of the judges of the Circuit Court is of the deliberate opinion, after having fully considered the cause, that there is a legal question upon the record as to which the Supreme Court ought to make a final deliverance, that in that case judgment of affirmance by the Circuit Court ought not to be final. I believe the proposition submitted by Judge Minshall provides, as one of the excepted cases, when the Circuit Courts certify that the case involves a legal question which, in the judgment of the court, ought to be reviewed by the Supreme Court.

The importance of this matter is one which merits the most thorough discussion and consideration, in my judgment, of this association. It is one of the most important propositions we have had to consider since the organization of the association, and it is a proposition in the line of the reformation which this association has set on foot and has diligently prosecuted. It is worthy of consideration whether, if this proposition were to be adopted, it will not, at any rate, be adopted by providing that, if either of the judges of the Circuit Court hearing a cause is of the opinion that a question of sufficient difficulty or importance is involved in the case as that the Supreme Court ought to consider it, that either party should have a right to remove the cause upon error from the Circuit Court. If I were to vote upon this proposition, I should desire to have both these clauses inserted; first, that the judgment of the Circuit Court should be the unanimous judgment of the court; and second, that if either of the judges of the Circuit Court shall certify that in his judgment the cause involves a legal question, which ought to be passed upon by the Supreme Court, that then either party should have a right to file a petition in error.

There is another suggestion I desire to make. I do not know what is proposed by the special Committee, which has been in session, as I see by the newspapers, considering this whole matter of the jurisdiction and modes of proceedings in the Circuit Court. I do not know whether they propose to allow the motion docket of the Supreme Court to remain in existence or not; I think they do. . Now, if there were no motion docket in the Supreme Court, there would be greater reasons existing in favor of this proposition that is now before us, which do not exist with a motion docket in the Supreme Court. By that, I mean where there is a statute which requires a party who desires to prosecute error in the Supreme Court, to obtain leave to file his petition in error before it is filed.

The effect of this proposition, if the motion docket of the Supreme Court is continued, is to make the judgment of the Circuit Court final and conclusive, as to whether their judgment is right or not, instead of going to the Supreme Court. The right now exists on a motion for leave to file a petition in error, to determine whether there is any question in the record of sufficient difficulty or importance that should induce that court to allow the party complaining to come into it with a cause thereafter to be considered.

So far as requiring petitions in error in the Supreme Court are concerned, in such cases in which the Circuit Court shall reverse the judgment of the Common Pleas, a petition in error may be filed to reverse the judgment of both courts as a matter of right. If you provide in all cases the judgment of the Circuit Court is final, you do not need any motion docket, because a petition in error may be filed as a matter of right, as I understand it. Undoubtedly a good deal of time is taken up by the Supreme Court in hearing applications for leave to file petitions in error. Much less time, however, is taken up now than

formerly, because now only questions of law can be taken to that court, and they are not compelled to listen to arguments, or to examine the records, whether the finding of the court below was contrary to the evidence. Still, a good deal of time is taken up by motions for leave to file petitions in error. What proportion of time is taken up, I never have heard any estimate. It would be desirable to know about how much time was taken up. I am inclined to think, that if the Supreme Court can, after the Circuit Court gets into full operation, dispose of all the business that may come into that court, without restricting the right to make application to file petitions in the Supreme Court at all, that parties ought to have the privilege of going there, but the probability is that that court may not be able to thus dispose of all of its business. If so, then either the proposition of Judge Minshall must be adopted, or else there must be a double-headed Supreme Court. Their must be a Supreme Court divided into two sections, one or the other. If we were driven into that corner, we could then determine which of the two evils was the least, for one or the other of the remedies would have to be adopted.

Now, it is simply a question as to whether it is the most judicious and wise course for this Association to postpone final action on this proposition until the next meeting of the Association, or to act upon it now. Of course, as the Supreme Court Commission expires in the early part of April, a new era of the Supreme Court will then open. It would be desirable, if we were clear about this radical proposition to adopt it, but the question is, in my mind, whether we can safely adopt it now, or whether it is not better to postpone final action until we shall have had a year's experience with the business in the Circuit Court, and with the business in the Supreme Court, after the new judicial regime.

MR. RICHIE: I made the motion for the purpose of bringing this matter before the Association, not for the reason that I favor the adoption of the minority report as a substitute for the majority report. The object of all courts, as I understand it, is to furnish a means for determining the rights of parties litigant. For that purpose the Circuit Court has been established. The object of the gentleman, as I understand it, who submits this minority report, is to relieve the Supreme Court. If the Circuit Courts prove to be that which we fondly hope they will be, the confidence their action inspires in the minds of the profession and of the laity, will certainly relieve the Supreme Court of the over-burden. Attorneys will not take their cases to the Supreme Court, if the judgment of the Circuit Court is such as convinces them that the questions are properly decided there. Would it not be better, however, to have half a dozen cases taken to the Supreme Court, when the decision of the Circuit Court was right, than to have a single case cut off at the Circuit Court, when it should be taken up and reversed on error? I am not in favor of the minority report. I think it should not be adopted. I do not think it should be adopted at any time, for if, as Brother Harrison says, a year's experience shows us that the Circuit Court possesses that intelligence and judicial ability, that would give their decisions weight, then it obviates the necessity of adopting this proposition. If it does not, then it should certainly not be adopted.

MR. LONG: A great question it seems to me that is sought to be reached in all the creation and regulation of courts is the question of the proper ruling upon the rights of the parties. The proposition made by Judge Minshall, and which is now being discussed, is one in line with the advancement sought to be made by the creation of the Circuit Court, or its substitution for the old District Court. Heretofore it has been complained, among other com-

plaints against the District Court, not only on account of the want of time to consider cases in the District Court, but also from the fact that the District Court, being composed of the same judges with those who passed on the case in the court below, started into the consideration of the case with a line of thought already formed upon that question, so they could hardly have been called clearly disinterested in their views of the case in the District Court; and one of the reasons for the creation of the Circuit Court was that it go to a new and independent court. Before the change was made cases were carried to the Supreme Court in at least one-half, if not in a majority of cases, because they wanted the decision and ruling of independent judges upon the questions which might be submitted, those who were not decided in the line of thought in which the original decision had been made, so that, in fact, in the majority of cases there was usually but one review, one disinterested review, of the questions that had been submitted to the courts. The Circuit Court having been created for the purpose of giving them one disinterested review will accomplish that object thoroughly, and when upon a fair and disinterested review of the questions that have been submitted to the two courts, there is an agreement between those two courts, then unless there be something of peculiar importance some question so close that there remain doubts even in the minds of the judges themselves with reference to the propriety of their decision, there can arise no necessity for speaking through the third disinterested court. The decision of the reviewing court in that case ought to be final because there is but little chance for a reversal of the decision of the two courts who fairly and properly considered the question. For this reason it seems to me that the object which was formerly said to be obtained by taking cases to the Supreme Court is fully accomplished by taking cases to the

Circuit Court. And as upon the question which was suggested by Mr. Harrison, and I make my remarks with due deference to the reputation of the gentleman, as to the suggestion that the proposition ought to be so altered that the certificate of one of the judges that the matter ought to be heard in the Supreme Court, it seems to me that this is wholly unnecessary, because the ordinary courtesy of gentlemen occuping such positions as judges of the Circuit Court, would lead two judges from whom one of their brethern upon the bench differed and gave reasons for differing, to be willing to certify that it was a question which ought to be decided in the Supreme Court. I think we may trust to the courtesy of the judges who occupy the Circuit Bench, to do all that is necessary to do under the circumstances suggested by Mr. Harrison. It seems to me the substitute submitted by the minority of the committee, is one of the changes in line with that advancement in our system of judicature which was so ably recommended by our President; and it is not so much of a change as to be so positive about, before we make it. We may know just as well after the experience of a year, whether it is advisable to continue a practice which has been suggested, as we may find out after the expiration of a year, whether it is advisable to adopt it. It is an experiment. The court itself is an experiment. A similar change that has been made has created a revolution in our judicial system, and it may be as well to make this change in line with the balance of the changes, and try how that experiment works, as to wait and feel our way as blind men feel, step by step. It seems to me that the substitute ought to be adopted.

MR. STUART: It seems to me an important item is lost sight of in this discussion, namely the interest of the people in this matter. It is within the experience of every member of the Bar, that hundreds of law-suits are avoided

every year by the cases that are reported in the highest reports to which the members of the Bar have access, and when a client comes to them and lays his case before them, they say: "You have no case, sir, because that question is decided and reported." The other side goes to his lawyer, and the lawyer says: "The Supreme Court have decided the law applicable to your cause against you, and you had better settle; you have got no case." Now the members of the Bar are interested quite as much in knowing what the law is as our clients themselves, the litigants who may have their rights passed upon by the Common Pleas Court or the Circuit Court. Let me suppose now that all the cases that are brought within the next year in the State of Ohio, could have the law applicable to them determined by the Supreme Court and reported, how many of them would be brought by members of the Bar? Not any of them, perhaps. We must bear in mind that the Bar, and the people who have to depend upon the Bar for the law, have an interest in every case tried as well as the litigants themselves, in knowing what the law is, so that they may avoid the charge of improper or incompetent advice, in matters that come before them. The very fact of having a Supreme Court implies that the Circuit Court and the lower courts may commit error. The very necessity of the Supreme Court is founded upon the implication that the Circuit Court will commit error. Now, I think it is just as vital to the rights of a party, when four judges have decided against him as though but one. It seems to me he ought to have the right to take his case to a higher court if he is willing to pay for it. The Bar and the public have an interest in every litigation as well as the parties themselves; an interest to have that particular case reported by the highest court, for the future guidance of the profession.

JUDGE DOYLE: While I am myself opposed to making

any radical changes, until after those changes shall have been suggested by experience in the new courts, I do want to say a word in favor of one or two changes in the present system. I understand the report of the majority of the Committee recommends the adoption of 6710 as it now exists. That section was amended in April,'83, with some other sections relating to practice in the Supreme Court. The changes that were made by the Act of April,'83 were, first, that the motion docket, as it is called, was restored, and no case could be filed in the Supreme Court without leave of the court or judge thereof. The second important change was that no case when the District Court had reversed the judgment of the Court of Common Pleas, and remanded the case for trial, could be heard or filed in the Supreme Court; that the action of the District Court could not be reviewed until after the case had been tried again and reached the Supreme Court through the District Court, at the same time when judgment of the Common Pleas Court would be affirmed.

The other important change was that the Supreme Court could not be required to review the weight of the evidence. The last change was a desirable one, and that ought to remain, and the other two ought to be abolished at once, and promptly in my judgment. There never was any reason why parties should be cut off in a case when the judgment of the court below was reversed by the District Court. In the substitute presented by Judge Minshall the right is given in this case to file their petition in error in the Supreme Court. That right shall be absolute. In my judgment it should be equally absolute when the judgment of the court below was affirmed, and my experience is, that those cases in which the court below is reversed, receive the most consideration, and the most attention from the District Court or the Supreme Court, from the court reversing; that is, greater care and a greater amount

of deliberation is given to the cases when the court below is reversed than in those cases where the court below is affirmed. I think the right to file a petition in error in the Supreme Court should be a right that did not depend upon the will of that court in the first instance, and I say that for another reason, that it is well known, that the time of the court from Thursday morning, when the motion docket is usually heard, until the business of Saturday, except in rare instances, is occupied by the consideration of motions for leave to file petition in error. If you will examine the proceedings in error, you will find that about half of the cases there appear on the motion docket for leave to file petitions in error. The court gives to those cases, when leave is granted, a consideration occupying perhaps from one day to a day and a half each week that is absolutely lost, for, when the case is reached on its merits the court has no opinion about it, nor has a member of the court any opinion about the case, growing out of the examination of it on the motion docket. That time is entirely wasted. Before this Act of April, 1883, the court had reached that part of the docket which had been made up from cases filed after the motion docket had been abolished. Many cases, it is true, were found there that were filed simply for delay, and in many of those cases when the petitions in error were filed for delay, no briefs had ever been filed in the case. Counsel had got all the time they could get, and the case was dismissed. The court had commenced attaching the penalty provided by law, and the result of the action of the court in enforcing with discretion, but with some vigor the penalties provided for delay would have resulted (and was then affecting a number of cases that were filed in the Supreme Court,) in stopping all that bringing of cases in the Supreme Court, merely for the purpose of getting time. The very moment this law was passed the court stopped applying these pen-

alties, and, I think, from that day to this, there have not been three cases in which the court has not omitted the penalty.

I believe in abolishing that provision of 6710, which provides that petition in error—

Mr. HARRISON: What would you say as to this proposition when the Supreme Court shall reverse the judgment of the Common Pleas; allow the party to file a petition in error in the Supreme Court as a matter of right, and when the judgment of the Common Pleas is affirmed, require that no petition in error should be filed, unless with leave to the Supreme Court.

JUDGE DOYLE: Well, of course, that would be an improvement on the present system. I am opposed to that. The Supreme Court could not be required to review a question of fact. Therefore, no question except a legal question can go to the Supreme Court. No question can be filed except a question of law. Now a moment ago it was suggested, and I think it is a part of this minority report, that when there was a judgment of affirmance, the Circuit Court judges should certify that there were questions of law which required the determination of the Supreme Court. Mr. President, I am a little bit afraid in affirming the judgment of the court below, there will be just pride enough of opinion in that Circuit Court to say that they do not believe there are questions involved in that case, which ought to be determined in the Supreme Court. My Brother Harrison spoke of the result of the District Court decisions in the Supreme Court. If you will take the last four or five volumes of the Supreme Court, you will find over one-third of the judgments of the District Court have been reversed. They are just as liable to be wrong when they affirm as they are when they reverse.

MR. NEWBEGIN: I rise solely to enforce the last remark of Judge Doyle, but with a little more emphasis. It is well known that I have no confidence in any court.

I have less in a jury, much less. Now, we get from these courts just what we wring from them. I have been in practice with some of my brethren here until I am old and gray-headed, and I never knew a judge, high or low, that thought his opinion ought to be reviewed; never. Now, I live in a hoop-pole region, and I do not have the advantages that my brethren here do. None of us do, but the larger majority of us country practitioners, with myself, are too impecunious to have any library. The Court is in the same way. The result is this Circuit Court is perambulating about over the country. They have no books. They do the best they can. None of us have any books, and they are just as liable to be right as they are wrong. They cannot examine the thing until they come here to Columbus. Now, the reason why these cases should go to our Supreme Court is that we impecunious devils up in the country may come down here, examine the books, and prepare our briefs in the library, as I have done again and again, at the dead of night. And I was going to say that we cannot properly prepare our cases for trial, or the judges themselves have the proper means to investigate a truth, whether they are right or wrong. They make the best guess they can. If you cut us off on the Circuit Court, you are cutting off about three-fourths of the cases. I was down here a few days ago and went into the library for some books; had come here to get them; could not get them elsewhere; am not able to have them; and now would you believe it, Mr. President, I found two of those volumes that I wanted in the library in the hands of one of the bar of this city. I won't say who he is. I went to him and asked him to let me have them. "He would let me know he wanted those books in his office, and he wanted me to understand that I was interfering with his prerogatives in asking him for those books." That is the way we have to make up our cases. Why, as a matter of fact,

now, I take it, the country pays about as much for the Library here as these gentlemen do in Columbus, and I help pay for it—a small matter to be sure—but I help pay for it. I say that that library is the only means we have of preparing our cases. The court sits here, and this is the only means where we can get them prepared properly, and I having no confidence at all in the Circuit Court to be created, having less in judges of the courts of Common Pleas, having some in the present Supreme Court, but very little, I want an opportunity to present my case to the Circuit Court in the light of the decisions of the common law of the land, the first opportunity for a fair hearing upon the law. And I think that that is the only object of the courts being organized. I have asked the question what the Supreme Court sit for? No one can make answer. I supposed they were there as a court of last resort for all cases. I would have but two courts. The more courts you have the longer you delay justice, the more costs you make,—good for us lawyers. We can stand it, but I supposed that when the Circuit Court was created, it was created merely as an intermediate court to take the place of the District Court, so far as its jurisdiction was concerned, and not as a court of last resort. Now, as we have not got a proper Supreme Court to do the business, let us try and devise one. It could have done the business if it had not had to review these cases for the Circuit Court. For my part, I shall, and always have had less confidence in the decision of an intermediate court, than I have in the decision of one judge sitting there.

JUDGE BINGHAM: If I am in order, I move to amend the motion of the gentleman from Allen County, which was, I believe, to supplement the majority report by the adoption of the minority report. I move this resolution as a substitute for the motion of the gentleman from Allen County.

"*Resolved*, That, the minority report be ordered printed in the Proceedings of the Association, and be referred to the Committee on Judicial Administration and Legal Reform, for its further consideration, and that the Committee report thereon at the next annual meeting of this Association."

In view, Mr. Chairman, of what has already been developed, this is a subject that ought not to be lightly considered, or acted upon without full consideration. It is one that is worthy and should command the best thought of the Bar of the State, and its being printed in the record of the Association, the Bar will have an opportunity throughout the State to read it and consider its bearing, and to be prepared by the next meeting of the Association to act intelligently upon the subject; and for that reason I approve of this resolution. There are comparatively few members of the Bar Association present, but in one year from this time, we shall have the benefit of more experience, and can act more intelligently upon the subject.

THE CHAIR: The gentleman from Allen County moved to substitute a certain part of the minority report for the majority report. The gentleman from Franklin moved to substitute a motion that this minority report be ordered printed, and referred back to the Committee on Judicial Administration and Legal Reform, to make report at the next annual meeting. The Chair rules that the adoption of the motion of the gentleman from Franklin County would not carry the majority report with it.

Adopted.

THE CHAIR: The minority report is referred back to the Committee for report next year. The question now recurs on the adoption of the majority report.

The report was adopted.

MR. RUSSELL: I ask leave to introduce this resolution at this time

Resolved, That it is the sense of this Association, that the Circuit Court should be required to have the presence of three judges competent to sit to constitute a quorum (as the law now is), and that this resolution be, by the Secretary, communicated to the Select Committee, of the Senate Judiciary Committee, now sitting with the subject in charge.

It is the suggestion of the Select Committee of the Senate that to have the court to consist of two judges, in case of sickness and casualty will open the door to the Circuit Court being constituted practically as a two judge court, and it is for the purpose of having the sense of this Association expressed to this committee that I offer this resolution.

MR. HARRISON: I merely wish to make one remark in reference to the resolution. If it is adopted the result may be to stop the Circuit Court for an indefinite period of time from working. That would be a serious loss, and in view of the fact that the judges of the Circuit Court are not judges of any other court, and if they were not performing their duties in that court they cannot claim they are performing duties anywhere else, and therefore, there is, or will be a sense of individual responsibility which it seems to me will impel the attendance of every judge, unless he is actually sick or from other cause absolutely prevented from attending his court.

JUDGE KENT: When we elected these gentlemen to the Bench in the Circuit Court, we supposed they were men of honor ready to perform the duties that they undertook, and I for one, think it ought to be, as I understand the Senate Committee proposes it shall be, that two judges can be a quorum in case of sickness or disability. I see no reason why that should open any door to remark that they would claim sickness to get rid of duty.

JUDGE DOYLE: The Senate proposition is in case of

sickness of one of the judges upon that fact being certified to the court, and entered upon the Journal, then the remaining two judges may, during that inability, constitute a quorum.

The resolution was lost.

Mr. A. W. Jones offered the following, which was, on his motion, referred to the Committee on Judicial Administration and Legal Reform:

Resolved, That the Committee on Judicial Administration and Legal Reform, be directed to inquire into the expediency and propriety of recommending to the General Assembly the enactment of a law, authorizing the employment of such number of stenographers as may be necessary, to assist the members of the Supreme Court in their clerical work.

Judge Elliott offered the following, which was, on motion, adopted:

Resolved, That in view of the importance of some of the questions discussed in the address of our President, Gen. Ward, and the want of time on the part of the old Committee to properly consider the same, said address, together with the resolution of Judge Green, on the subject of the Codification of the Common Law, be referred to the new Committee on Judicial Administration and Legal Reform, to be passed thereon at the next meeting of the Association.

Judge Stuart submitted the following, and moved its reference to the Committee on Judicial Administration and Legal Reform:

Resolved, That the Committee on Judicial Administration and Legal Reform be directed to enquire and report on the advisability of recommending to the Legislature the passage of laws upon the following subjects:

1st. Authorizing the foreman of a Grand Jury to administer oaths and certify to the attendance of witnesses in matters pending before such jury; thereby saving ex-

pense to the county, and avoiding the interruption of trials, by witnesses gathering about the clerk's desk.

2d. Authorizing judges of the Common Pleas to confirm sales of real estate, and distribute proceeds in vacation on notice.

3d. Authorizing judgments on cognovits to be entered on the order of a Common Pleas Judge, and execution issued in vacation.

4th. Providing for the sale of the fee of a homestead subject to the homestead, as is now done in cases of dower.

5th. Prohibiting preferences by insolvent debtors on the eve of failure or assignment.

6th. Providing for taxing the costs of taking and recording bills of exceptions as part of the costs of the higher court on reversal or affirmance, and requiring the party taking such bill to pay the costs thereof, if the case is not taken up.

7th. Providing that only the pleadings on which the case is actually tried, and the verdict and judgment shall constitute the record to be made up by the clerk, unless the court, for good cause shown, shall otherwise direct.

So referred.

JUDGE ELLIOTT: At the last meeting we find on page 83 a resolution was offered by Mr. Newbegin as follows:

Resolved, That the Constitution of this Association be so amended as to make the President of the Association a member *ex-officio* of the Committee on Judicial Administration and Legal Reform.

That resolution remained there ever since. Now, I move that that resolution be referred to the Executive Committee, with instructions to report as soon as possible.

So referred.

The Executive Committee made the following report:

TO THE MEMBERS OF THE BAR ASSOCIATION OF THE STATE OF OHIO:

Your committee to whom was referred the resolution of Henry Newbegin, Esq., to amend the Sixth Article of the Constitution be amended by substituting the word "Circuit" for "District," have had the same under consideration, and beg leave to make the following report:

Your committee have given the matter of said resolution, as much consideration as under the limited time could be done, and are of the opinion that the same ought not to be amended as proposed, for the reason that the effect of the amendment would be to reduce the number of each of the committees from ten to seven, and leave the number of the vice presidents of this Association at ten, as is fixed by Article 5 of the Constitution, and we are of the opinion that it is not advisable to reduce the number of the several committees.

Respectfully submitted.

P. C. SMITH,
Chairman pro. tem.

MR. SMITH: The committee also reporting favorably on the resolution, referred to it, whereby the President of the Association is made *ex officio* a member of the Committee on Judicial Administration and Legal Reform.

It was agreed that Dr. Von Klein be requested to deliver his address on Medical Jurisprudence after the noon recess.

Upon motion, the Association took a recess until half-past one o'clock P. M.

AFTERNOON SESSION.

Called to order at half past one o'clock.

The paper of Dr. Von Klein was read by that gentleman.

Upon motion of Mr. Critchfield, the thanks of the Association were returned to the President and Secretary, for their faithful performance of duty; the question being put by the mover.

The following resolution offered by Mr. Krauss was referred.

Resolved, That the Committee on Judicial Administration and Legal Reform, be directed to inquire into the expediency of so amending the Code, that no complete record shall be made in any case, except where lands are sold, unless one of the parties desire it, and move the court so to order, and then that such record shall be made at the costs of the party requiring it, and that said Committee report hereon at the next regular meeting of the Association.

Adjourned.

MEMBERS

OF THE

OHIO STATE BAR ASSOCIATION.

Adams, J. M	Cleveland
Albery, F. F. D	Columbus
Albery, H. B	Columbus
Allen, A. L.	Kenton
Alvord, H	Painesville
Ambler, J. A.	Salem
Armstrong, S. A.	Celina
Arrel, George F.	Youngstown
Arthur, George	Springfield
Austin, D. R	Toledo
Averill, H. E.	Toledo
Baber, Llewellyn.	Columbus
Baker, Rufus H.	Toledo
Baker, William	Toledo
Baldwin, F. A.	Bowling Green
Baldwin, George E.	Canton
Bannon, J. W.	Portsmouth
Barber, G. M	Cleveland
Barger, G. H	Coshocton
Bates, James L	Columbus
*Beavis, B. R	Cleveland
Beckwith, George H	Toledo
Beebe, H. L	Mt. Gilead
Bentley, Charles S.	Bryan
Babst, Dan., Jr	Crestline
Billingsley, N. B.	New Lisbon
Bingham, E. F	Columbus

*Deceased.

*Bishop, J. P . . . . . Cleveland
Blandin, E. J . . . . . Cleveland
Boardman, W. J . . . . . Cleveland
Booth, H. J . . . . . Columbus
Boothman, M. M . . . . . Bryan
Bope, James A . . . . . Findlay
Bowman, J. H. . . . . Columbus
Bowman, S. A . . . . . Springfield
Boynton, P. H . . . . . Elyria
Brewer, A. T . . . . . Cleveland
Brooks, J. T . . . . . Salem
Brotherton, B. J . . . . . Delphos
Brotherton, John F. . . . . Lima
Brotherton, T. W . . . . . Wapakoneta
Brown, D. I. . . . . Ottawa
Brown, Voris P . . . . . Toledo
Brumback, O. S . . . . . Toledo
Buckland, R. P . . . . . Fremont
Bunker, H. S . . . . . Toledo
Burkett, J. F . . . . . Findlay
Burnet, J . . . . . Cincinnati
Burr, Charles E., Jr . . . . . Columbus
Cable, Davis J. . . . . Lima
Cadwell, D . . . . . Cleveland
Cameron, J. L. . . . . Marysville
Campbell, Oscar J . . . . . Cleveland
Campbell, J. V . . . . . Eaton
Canary, John W. . . . . Bowling Green
Canfield, D. W . . . . . Chardon
Carhart, H. C . . . . . Galion
Carpenter, J. S . . . . . Akron
Carpenter, Reed . . . . . Mansfield
Carper, H. M . . . . . Delaware
Caskey, A. C . . . . . Cleveland

*Deceased.

Chamberlain, H. A . . . . . Toledo
Clark, M. L. . . . . Chillicothe
Clark, A. H. . . . . East Liverpool
Clark, John . . . . . New Lisbon
Clark, C. D . . . . . Willoughby
Clark, G. J . . . . . Elyria
Clark, W. T. . . . . Cleveland
Cochran, A. P. L . . . . . Springfield
Collins, W. A. . . . . Toledo
Collins, J. H . . . . . Columbus
*Collins, Francis . . . . . Columbus
Collins, Charles H . . . . . Hillsboro
Collins, J. A . . . . . Hillsboro
Constable, R. A . . . . . Athens
Constantine, Chas. W. . . . . Springfield.
Converse, George L . . . . . Columbus
Conkling, J. S. . . . . Sidney
Contle, J. W . . . . . Galion
Coon, John . . . . . Cleveland
Cope, Alexis . . . . . Columbus
Cotton, Robert H . . . . . Columbus
Cowen, A. T . . . . . Batavia
Cowdry, J. N . . . . . Niles
Cox, J. D. . . . . Cincinnati
Cox, Joseph. . . . . Cincinnati
Crane, A. P. . . . . Toledo
Crawford, S. T . . . . . Cincinnati
Critchfield, L. J . . . . . Columbus
Critchfield, L. R . . . . . Millersburg
Crum, Ira H . . . . . Columbus
Culver, E. M . . . . . Sandusky
Cunningham, T. E . . . . . Lima
Darlington, Charles. . . . . Xenia
Daton, James F . . . . . Steubenville

*Deceased.

Daugherty, M. A . . . . . Columbus
Davidson, William A. . . . . Cincinnati
Davis, Wm. Z. . . . . Marion
Day, D. W. H . . . . . Bowling Green
Day, William R . . . . . Canton
Denison, Amos . . . . . Cleveland
De Steiguer, Rodolph . . . . . Athens
Devin, J . C. . . . . Mt. Vernon
De Wolf, Homer B. . . . . Cleveland
De Witt, E. L. . . . . Columbus
Dickerson, Charles D. . . . . Columbiana
Dickman, F. J. . . . . Cleveland
Dirlam, D. . . . . Mansfield
Dowdall, Ed. J. . . . . Columbus
Doyle, Dayton A . . . . . Akron
Doyle, John H . . . . . Toledo
Duncan, Thomas J. . . . . Columbus
Dunn, A. K . . . . . Mt. Gilead
Durfee, L. E . . . . . Chardon
Earnhart, M. B . . . . . Troy
Edgerton, S. . . . . Akron
Edwards, J. M. . . . . Youngstown
Elliott, H . . . . . Dayton
Emerson, T. W . . . . . Barnesville
Emory, Thomas . . . . . Bryan
Enochs, W. H . . . . . Ironton
Estep, E. J . . . . . Cleveland
Evans, E. P. . . . . Columbus
Evans, Mason . . . . . Youngstown
Evens, W. E . . . . . Chillicothe
Everett, C. W. . . . . Toledo
Fay, W. L . . . . . Elyria
Finley, E. B . . . . . Bucyrus
Finefrock, T. P. . . . . Fremont
Fitch, Edward H. . . . . Jefferson

Folger, R. H. . . . . Massillon
Follett, A. D. . . . . Marietta
Follett, Charles . . . . . Newark
Follett, John F. . . . . Cincinnati
Follett, M. D. . . . . Marietta
Force, M. F. . . . . Cincinnati
Ford, Tod . . . . . Youngstown
*Foster, Edward. . . . . Byran
Foster, George H . . . . . Cleveland
Foster, John M. . . . . Cincinnati
Frank, J. L. H . . . . . Dayton
Fuller, R. . . . . Toledo
Gardner, George B. . . . . Hillsboro
Gary, M. B. . . . . Cleveland
Geddes, F. L. . . . . Toledo
Gilbert, N. A. . . . . Cleveland
Gilbert, Lucien L. . . . . Salem
Gilmore, W. J. . . . . Columbus
Glenn, H. C. . . . . Van Wert
Glidden, J. J. . . . . Cincinnati
Godfrey, T. J. . . . . Celina
Goddard, Charles C. . . . . Zanesville
Goode, Frank C. . . . . Springfield
Goode, James S. . . . . Springfield
Goodhue, N. W. . . . . Akron
Goodwin, H. . . . . Sandusky
Gottschall, O. M. . . . . Dayton
Granger, M. M. . . . . Zanesville
Green, E. P. . . . . Akron
Green, Arnold . . . . . Cleveland
Greer, J. T. . . . . Toledo
Gregg, Ace. . . . . Washington C. H.
Griswold, S. O. . . . . Cleveland
Groat, George A . . . . . Cleveland

*Deceased.

Groesbeck, Telford . . . . . Cincinnati
Groom, John C . . . . . Columbus
Grosvenor, C. H. . . . . Athens
Guerin, W. E. . . . . Columbus
Hackedorn, W. E . . . . . Lima
Hagan, F. M. . . . . Springfield
Hagerty, L. D. . . . . Columbus
Hale, J. C. . . . . Elyria
Hall, J. J. . . . . Akron
Hall, E. . . . . Ashtabula
Hall, Theodore . . . . . Ashtabula
Hambleton, S. . . . . Columbus
Hamilton, John . . . . . Ironton
Hamilton, E. T. . . . . Cleveland
Hamilton, W. B. . . . . London
Handy, W. H. . . . . Wauseon
Hanna, J. J. . . . . Columbus
Harmon, Augustus . . . . . Hillsboro
Harmon, Judson . . . . . Cincinnati
Harper, J. J. . . . . Portsmouth
Harr, W. H . . . . . Hamilton.
Harris, S. R. . . . . Bucyrus
Harris, W. H. . . . . Toledo
Harrison, R. A. . . . . Columbus
Hart, Alphonso . . . . . Hillsboro
Haskell, C. N. . . . . Ottawa
Hathaway, I. N. . . . . Chardon
Haynes, George R. . . . . Toledo
Heisley, J. W. . . . . Cleveland
Heitmann, J. H. . . . . Columbus
Henderson, W. O. . . . . Columbus
Herron, John W. . . . . Cincinnati
Hill, H. R. . . . . East Liverpool
Hire, John T. . . . . Hillsboro
Hoadly, George . . . . . Cincinnati
Hodge, N. . . . . Akron

Holcomb, A. T. . . . . Portsmouth
Hollingsworth, D. A. . . . . Cadiz
Holmes, J. T. . . . . Columbus
*Horton, J. D. . . . . Ravenna
Houk, George W. . . . . Dayton
Hough, R. T. . . . . Hillsboro
Huggins, H. M. . . . . Hillsboro
Hune, Conrad . . . . . New Lisbon
Hunt, S. F. . . . . Cincinnati
Hunter, C. O. . . . . Columbus
Hunter. S. M. . . . . Newark
Hunter, George P. . . . . Warren
Hutchins, J. C. . . . . Cleveland
Hutchins, John . . . . . Cleveland
Hutchins, W. A. . . . . Portsmouth
Ingersoll, J. E. . . . . Cleveland
Jahn, Carl G . . . . . Columbus
James, E. W. . . . . Coshocton
Jewett, Leonidas M . . . . . Athens
Johnson, A. B. . . . . Kenton
Johnson, Thomas J. . . . . Ironton
Johnson, R. W. . . . . Galion
Johnston, J. C . . . . . Marion
Johnston, J. R . . . . . Canfield
Jones, Bruce P. . . . . London
Jones, John David . . . . . Newark
Jones, J. M. . . . . Cleveland
Jones, A. W. . . . . Youngstown
Jordan, W. J. . . . . New Lisbon
Kain, George S. . . . . Cleveland
Keating, T. J. . . . . Columbus
Keith, M. R. . . . . Cleveland
Kent, Charles . . . . . Toledo
Kerruish, W. S. . . . . Cleveland

*Deceased.

Kinder, W. H. . . . . Ottawa
King, Rufus . . . . . Cincinnati
King, E. B. . . . . Sandusky
King, John W. . . . . Zanesville
King, L. W. . . . . Youngstown
Kingsbury, B. B. . . . . Defiance
Kleinschmidt, E. H. . . . . Cincinnati
Kline, S. P. . . . . Cleveland
Knowles, S. S. . . . . Marietta
Kohler, J. A . . . . . Akron
Kramer, A. . . . . Oak Harbor
Krauss, W. C. G. . . . . Ottawa
Krumm, Alex W. . . . . Columbus
Lane, Eugene . . . . . Columbus
Latty, A. S. . . . . Defiance
Laubie, P. A. . . . . Salem
Lawrence, James . . . . . Cleveland
Lawrence, W. V. . . . . Chillicothe
Lawrence, William . . . . . Bellefontaine
Layton, C. A. . . . . Wapakoneta
Lee, John C. . . . . Toledo
Leedom, John S. . . . . Urbana
Leggett, M. D. . . . . Cleveland
Lemmon, R. C. . . . . Toledo
Lewis, G. W. . . . . Medina
Lincoln, George . . . . . London
Lincoln, T. D. . . . . Cincinnati
Linn, T. P. . . . . Columbus
Little, John . . . . . Xenia
Long, J. L. H. . . . . Ottawa
Long, D. C . . . . . Ottawa
Loomis, W. B. . . . . Marrieta
Lord, Charles G. . . . . Columbus
Lorenz, H. C. . . . . Toledo
Lowe, Thomas O. . . . . Dayton
Luccock, Sam'l C. . . . . Cambridge

Lynch, Austin . . . . . Canton
Lynch, Wm. A. . . . . Canton
Mackey, John . . . . . Sandusky
Marks, Joseph E. . . . . Hillsboro
Marshall, R. D. . . . . Dayton
Marshall, Thomas J. . . . . Port Clinton
Martin, O. T. . . . . Springfield
Marvin, U. L. . . . . Akron
Marvin, A. J . . . . . Cleveland
Mason, James . . . . . Cleveland
Matthews, Stanley . . . . . Cincinnati
McCauley, John . . . . . Tiffin
McClure, H. E . . . . . Ottawa
McCloud, J. C . . . . . London
McCloud, R. H . . . . . London
McElroy, C. H . . . . . Delaware
McFarland, W. C . . . . . Cleveland
McGillivray, J. M . . . . . McArthur
McGuffey, J. G . . . . . Columbus
McIntire, A. R . . . . . Mt. Vernon
McKinley, Wm., Jr . . . . . Canton
McKinney, Henry . . . . . Cleveland
McLean, Lester . . . . . Elyria
McMahon, John A . . . . . Dayton
McMath, J. H. . . . . Cleveland
McNaghten, D. T . . . . . Columbus
McNabb, M. C . . . . . Youngstown
McNeal, J. F . . . . . Marion
McSweeney, John, Jr. . . . . Wooster
Merriman, Chas. A. . . . . Mt. Vernon
Metz, Durbin . . . . . Wooster
Meyer, S . . . . . Canton
Meyer, Ed. S . . . . . Cleveland
Miller, Allen . . . . . Columbus
Miller, J. H. . . . . Steubenville

Miller, J. D . . . . . Franklin
Minshall, T. A . . . . . Chillicothe
Minturn, W. H. H . . . . . Athens
Moore, J. J . . . . . Ottawa
Moore, O. F . . . . . Portsmouth
Morrill, H. A . . . . . Cincinnati
Morse, Nathan. . . . . Akron
Mower, J. K . . . . . Springfield
Munger, E. H. . . . . Xenia
Munger, Warren. . . . . Dayton
Nash, George K . . . . . Columbus
Neal, L. T . . . . . Chillicothe
Newbegin, Henry . . . . . Defiance
Newby, Cyrus. . . . . Hillsboro
Newman, George O . . . . . Portsmouth
Nevin, R. M . . . . . Dayton
Nichols, W. A . . . . . New Lisbon
Noble, Henry C. . . . . Columbus
Noble, Warren P . . . . . Tiffin
Northway, S. A . . . . . Jefferson
Odell, M. N . . . . . Toledo
O'Donnell, Martin . . . . . London
Oglevee, J. F . . . . . Columbus
Ohler, James O . . . . . Lima
Olds, Chauncey N . . . . . Columbus
O'Neill, John . . . . . Zanesville
Osborn, J. R . . . . . Toledo
Oviatt, Edw. . . . . Akron
Owen, Selwyn N. . . . . Bryan
Owesney, W. A . . . . . Steubenville
Outhwaite, Jos. H . . . . . Columbus
Page, Walter B . . . . . Columbus
Parker, Robert S. . . . . Bowling Green
Parsons, C. C . . . . . Wooster
Pennewell, C. E . . . . . Cleveland
Penney, T. E . . . . . Kenton

Perry, Aaron F . . . . . Cincinnati
Pettibone, F. A . . . . . Ashtabula
Pike, L. H . . . . . Toledo
Pillars, Isaiah . . . . . Lima
Piper, L . . . . . Marysville
Platt, R. H . . . . . Columbus
Potter, E. D., Jr. . . . . Toledo
Powell, L. K . . . . . Mt. Gilead
Pratt, Albert M . . . . . Bryan
Pratt, Charles . . . . . Toledo
Price, J. F . . . . . Toledo
Price, Jas. L . . . . . Lima
Pringle, T. J . . . . . Springfield
Prophet, H. S . . . . . Lima
Pruden, A. J . . . . . Cincinnati
Pugh, J. C. L . . . . . Columbus
Raudebaugh, J. N . . . . . Celina
Ranney, H. C . . . . . Cleveland
Ranney, R. P . . . . . Cleveland
Rawlings, George . . . . . Springfield
Raymond, E. P . . . . . Toledo
Read, M. C . . . . . Hudson
Reed, W. H. A . . . . . Toledo
Reeves, J. G . . . . . Lancaster
Richards, J. A. D . . . . . New Philadelphia
Richards, R. G . . . . . Steubenville
Richards J. K . . . . . Ironton
Richards, J. C . . . . . Columbus
Richie, J. E . . . . . Lima
Richie, W. B . . . . . Lima
Ricks, A. J. . . . . Cleveland
Rike, J. C . . . . . Toledo
Ritchie, J. M. . . . . Toledo
Rhoades, E. H . . . . . Toledo
Rhodes, J. H . . . . . Cleveland
Rockel, W. M. . . . . Springfield

Rouse, B. W . . . . . Toledo
Russell, L. A . . . . . Cleveland
Sadler, E. B . . . . . Sundusky
Safford, W. H . . . . . Chillicothe
Sanderson, T. W . . . . . Youngstown
Sanford, H. C . . . . . Akron
Schenkle, P. C . . . . . Sandusky
Scribner, C. H . . . . . Toledo
Scroggs, Jacob . . . . . Bucyrus
Sears, John D . . . . . Upper Sandusky
Sheets, J. M . . . . . Ottawa
Sheppard, O . . . . . West Alexandria
Shields, Robert S . . . . . Canton
Shunk, C. K . . . . . Cincinnati
Slattery, John A . . . . . Cincinnati
Sloan, W. B . . . . . Port Clinton
Sloan, Ulric . . . . . Hillsboro
Smick, J. H . . . . . Kenton
Smith, J. M . . . . . Lebanon
Smith, J. W . . . . . Ashland
Smith, P. C. . . . . Circleville
Smith, Barton. . . . . Toledo
Smith, P. C. . . . . London
Smith, H. W. . . . . London
Smith, W. T. . . . . Barnesville
Spence, George . . . . . Springfield
Spencer, C. L . . . . . Xenia
Sowers, E . . . . . Cleveland
Squire, Andrew . . . . . Cleveland
Steel, S. F . . . . . Hillsboro
Stephenson, J. E . . . . . Chardon
Stevens, Chas. H . . . . . Cincinnati
Stewart, Gilbert H . . . . . Columbus
Stockwell, H. T . . . . . New Philadelphia
Stoddart, J. J . . . . . Columbus
Stone, C. M . . . . . Cleveland

Strong, T. R . . . . . Norwalk
Stuart, M . . . . . Ravenna
Sullivan, John D . . . . . Columbus
Swan, C. J . . . . . Toledo
Swayne, N. H., Jr . . . . . Toledo
Swayne, F. B . . . . . Toledo
Taggart, Frank . . . . . Wooster
Taggart, W. Rush . . . . . Salem
Tanzy, W. R . . . . . Washington C. H
Tappan, Charles . . . . . Columbus
Taylor, R. W . . . . . East Liverpool
Taylor, E. L . . . . . Columbus
Taylor, Henry C . . . . . Columbus
Terrill, H. L . . . . . Cleveland
Thayer, A. A . . . . . Warren
Thompson, A. C . . . . . Portsmouth
Thompson, James H . . . . . Hillsboro
Thompson, S. J . . . . . Cincinnati
Thompson, George K . . . . . Cincinnati
Thompson, E . . . . . Dayton
Thomas, W. B . . . . . Ravenna
Throckmorton, J. I . . . . . Columbus
Tibbals, M. D . . . . . Akron
Tibbetts, J. M . . . . . Columbus
Tilden, M. H . . . . . Cincinnati
Tollerton, E. W . . . . . Toledo
Tomkins, E . . . . . Athens
Townsend, Charles . . . . . Athens
Townsend, James B . . . . . Lima
Train, A. W . . . . . Zanesville
Troup, James O . . . . . Bowling Green
Tyler, Joel W . . . . . Cleveland
Tyler, Justin H . . . . . Napoleon
Upson, William H . . . . . Akron
VanDeman, John D . . . . . Delaware
Van Fleet, H. T . . . . . Marion

Von Seggern, Chris . . . . . Cincinnati
Vorhes, A. W. . . . . Pomeroy
Voris, A. C. . . . . Akron
Waite, E. T . . . . . Toledo
Walker, George R. . . . . Norwalk
Wallace, J. H. . . . . New Lisbon
Walters, L. D. . . . . Akron
Ward, Durbin . . . . . Lebanon
Warnock, W. R . . . . . Urbana
Waters, Octavius . . . . . Delta
Watson, D. K . . . . . Columbus
Watson, James . . . . . Columbus
Way, W. G. . . . . Marietta
Weaver, W. S . . . . . Springfield
Webster, J. H . . . . . Cleveland
Webster, I. A . . . . . Elyria
Weh, John F. . . . . Cleveland
Weldy, S. . . . . Logan
Wertman, S. S . . . . . Ashland
Wheeler, J. S. . . . . Lima
White, C. R . . . . . Springfield
White, C. A . . . . . Georgetown
*White, William . . . . . Springfield
White, Richard . . . . . Toledo
Whiteley, M. C. . . . . Findlay
*Wildes, Thomas F. . . . . Akron
Williams, D. E . . . . . Columbus
Williams, J. M . . . . . Coshocton
Williamson, S. E . . . . . Cleveland
Willey, George . . . . . Cleveland
Willson, L. A. . . . . Cleveland
Wilson, Horace . . . . . Columbus
Wilson, Percy R. . . . . Columbus
Wilson, George W. . . . . London

*Deceased.

Wing, F. J. . . . . Cleveland
Wise, Henry A . . . . . Canton
Wood, F. W . . . . . Columbus
Wood, J. P. . . . . Athens
Woodbury, H. B . . . . . Jefferson
Worthington, D. I. . . . . Washington, C. H.
Wright, James E . . . . . Columbus
Wylie, H. J. . . . . Columbus
Yaple, Alfred . . . . . Cincinnati
Young, W. D. . . . . Ripley
Young, John H . . . . . Urbana
Young, Edward S. . . . . Dayton
Young, George R . . . . . Dayton